

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

ZACHRY HOLDINGS, INC., <i>et al.</i> ¹	)	CASE NO. 24-90377 (MI)
)	
DEBTORS	)	CHAPTER 11
)	
	)	(Jointly Administered)
)	

**COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST'S MOTION FOR
SUMMARY JUDGMENT WITH RESPECT TO DEBTORS' OBJECTION TO THE
CLAIM OF COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

¹ The last four digits of Zachry Holdings, Inc.' 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 identification numbers may be obtained on the website of the Debtors' proposed claims agent and noticing agent at www.veritaglocal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



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Pursuant to Bankruptcy Rules 9014(c) and 7056, and Federal Rule of Civil Procedure 56, Commonwealth Electric Company of the Midwest (“CECM”) hereby moves for Summary Judgment as to the affirmative defenses and claims for offset raised by Debtors in the Objection to the Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003) (Doc. 233610) (the “Objection”). As explained below, Zachry is precluded as a matter of law, from claiming an offset under the Service Agreement to reduce the amount owed to CECM, and the Objection should be denied.

PRELIMINARY STATEMENT

Zachry Industrial Inc. (“Zachry”) contracted with Omaha Public Power District (“OPPD”) to design and build two electric power generation facilities in Omaha, Nebraska: the Standing Bear Lake Project and the Turtle Creek Project. Zachry hired CECM as a subcontractor to perform portions of the electrical work on these two projects, under five separate subcontracts. CECM has filed a proof of claim (Claim No. 1003) in this Bankruptcy, seeking payment of \$5,359,030.62 for work CECM performed under the five subcontracts before Zachry filed for Bankruptcy.²

The Objection filed by Debtors seeks to reduce CECM’s claim with respect to work that CECM performed on the largest of the five subcontracts: (Service Agreement #115001-605028 or referred to by Zachry as the “**Service Agreement**”). Specifically, Debtors claim they are entitled to an offset for additional costs Zachry allegedly incurred to “complete, repair, replace, correct and rework CECM’s incomplete and defective work” under the Service Agreement. The Objection to reduce CECM’s claim only relates to CECM’s work pursuant to the Service Agreement.

² CECM reserves all of its rights as to pursuit of post-petition amounts owed to CECM by the Debtors, including the principal amount owed of \$219,907.00 for post-petition services and materials provided at the request of the Debtors.

CECM disputes that it performed defective or incomplete work under the Service Agreement, and it is prepared to present evidence in defense of these claims in an evidentiary hearing if necessary. However, there is no genuine dispute as to the following material facts: (1) Zachry terminated the Services Agreement for convenience under section 16.2, preventing CECM from completing any of its work in progress; (2) Zachry did not provide notice to CECM of any alleged defective work; and (3) Zachry did not give CECM an opportunity to inspect and correct any alleged defective work following Zachry's termination of the Service Agreement for convenience.

The provisions of the Service Agreement relied on by Zachry in its Objection did not survive Zachry's termination of the Service Agreement. Further, *even if* Zachry had not terminated the Service Agreement — a fact which is undisputed — Zachry failed to give CECM written notice of any alleged defects and an opportunity to cure such alleged defects, both express requirements of the Service Agreement. For these reasons, as a matter of law, the Service Agreement does not permit Zachry to allege an offset or reduction for alleged defective or incomplete work. Accordingly, the Court should dismiss Debtors' Claim Objection because Zachry is precluded from asserting an offset to reduce the amount owed to CECM under the Service Agreement.

FACTUAL BACKGROUND

The following undisputed facts establish that CECM is entitled to summary judgment on the contested matter of Debtors' Objection to the claim of CECM as a matter of law.

1. Zachry hired CECM as a supplemental subcontractor to perform electrical work for Zachry on a time and material basis on the Standing Bear Lake Project. (Ex. A, Thornton Decl. at ¶ 6-8).

2. Pursuant to the Service Agreement, CECM was to supply a supplemental labor force to perform electrical work on site along with Zachry's crews and other electrical subcontractors, under Zachry's supervision and at Zachry's direction. (*Id.* at ¶ 10-12).

3. From November 2023 until May 2024, CECM performed work on the Standing Bear Lake Project at Zachry's direction. Zachry issued payments to CECM for the labor and material invoices CECM submitted through February 2024 as required by the Service Agreement.

4. Zachry did not pay the March 2024 invoice and subsequently failed to pay the April and May 2024 invoices submitted by CECM. (*Id.* at ¶ 18).

5. Zachry did not issue a notice to CECM that it was withholding payment under section 10.1.3 of the Service Agreement for "defective work not remedied by Seller." (*Id.* at ¶ 28; Ex. 1, Service Agreement, at § 10.1.3; Ex. B, Decl. Deats, at ¶ 18).

6. Zachry did not issue a notice to CECM that it would be pursuing "backcharges" under article 11.9 of the Service Agreement. (Ex. A, at ¶ 40; Ex. 1, at § 11.9; Ex. B, at ¶ 13-18).

7. In fact, Zachry did not send any written notice to CECM that it contended CECM had performed defective work under the Service Agreement, nor did Zachry request that CECM remedy any alleged defective work under the Service Agreement. (Ex. B, Decl. Deats, at ¶ 13, 14, 16-18; Ex. A, at ¶ 13).

8. Instead, on April 11, 2024, Zachry executed a Change Order to increase the "NOT TO EXCEED" amount of the Service Agreement by \$5,000,000, bringing the total "NOT TO EXCEED" amount of this time and materials subcontract to \$10,000,000. The Change Order also extended CECM's time of performance from March 1, 2024, to June 30, 2024. (Ex. A, at ¶ 13-14; Ex. 2, Change Order No. 1).

9. On May 15, 2024, Zachry terminated the Service Agreement for convenience pursuant to section 16.2 of the Service Agreement. (Ex. 3).

10. Less than a week later, Zachry voluntarily filed this Chapter 11 Bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Texas. (Doc. 1).

11. Zachry has not alleged that CECM performed any incomplete or defective work on any of the other four subcontracts, and notably, Zachry continued to have CECM perform work under the smaller four subcontracts even after Zachry terminated the Service Agreement for convenience and commenced this bankruptcy.³ (Ex. A, at ¶¶ 22-24).

STANDARD OF REVIEW

12. Rule 56(a) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 9014(c) and 7056,⁴ provides that summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A genuine issue of material fact exists if a reasonable jury could enter a verdict for the non-moving party.” *QBE Ins. Corp. v. Brown & Mitchell, Inc.*, 591 F.3d 439, 443 (5th Cir. 2009). A fact is material when it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

13. “The movant ‘bears the initial responsibility of informing the district court of the basis for its motion,’ and must identify ‘those portions of [the record] . . . which it believes demonstrate the absence of a genuine issue of material fact.’” *Celotex Corp. v. Catrett*, 477 U.S.

³ CECM has not been paid for the work it performed under the other four subcontracts after the Bankruptcy petition was filed and CECM reserves all of its rights as to pursuit of post-petition amounts owed to CECM by the Debtors, including the principal amount owed of \$219,907.00 for post-petition services and materials provided at the request of the Debtors.

⁴ An objection to a proof of claim that falls under § 502(b) creates a contested matter. *Simmons v. Savell* (In re Simmons), 765 F.2d 547, 552 (5th Cir.1985); Fed. R. Bankr.P. 3007, Advisory Committee Note (1983). Contested matters are governed by Rule 9014. Fed. R. Bankr.P. 9014(a). Rule 9014(c) triggers the application of certain rules, including Rule 7056, “unless the court directs otherwise.” Fed. R. Bankr.P. 9014(c).

317, 323 (1986). “If the movant does so, the nonmovant must respond by submitting evidentiary materials that set out ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324. Summary judgment is appropriate if the non-movant cannot present facts sufficient to establish “‘the existence of an element essential to that party’s case.’” *Bluebonnet Hotel Ventures, L.L.C.*, 754 F.3d 272, 276 (5th Cir. 2014) (quoting *Celotex Corp.*, 477 U.S. at 322).

14. The Court “must view the evidence in the light most favorable to the non-moving party.” *QBE Ins. Corp.*, 591 F.3d at 442. However, the nonmoving party must “do more than simply allege a material issue of fact[,]” and instead must “‘go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.’” *Lyons v. Lamb County*, 275 F.3d 43, 43 (5th Cir. 2001) (quoting *Celotex Corp. v. Catrett*, 377 U.S. 316, 324 (1986)). If the proffered evidence does not have probative value as to a genuine issue, summary judgment is appropriate. *Melton v. Teachers Ins. & Annuity Ass’n of Am.*, 114 F.3d 557, 559 (5th Cir. 1997).

ARGUMENT

15. In the Claim Objection, Zachry argues that it is entitled to the affirmative defense of setoff or recoupment. (Doc. 2336 ¶ 20). Specifically, Zachry claims that pursuant to Art 11.9, and 10.1.3 of the Service Agreement, “the Court should reduce the Claim because [CECM] performed incomplete, defective, and/or unnecessary duplicative work not in accordance with the Service Agreement.” (Doc. 2336 ¶ 22). These contractual provisions did not survive termination of the Service Agreement, but even if they did, Zachry failed to provide the required written notice to invoke these provisions under the Service Agreement.

I. Zachry Is Not Entitled to Setoff or Reduce Its Obligation to CECM under the Service Agreement that it Terminated

16. Pursuant to 11 U.S.C. § 558, the Debtors are entitled to assert any defenses Zachry would have had prepetition. *In re PSA, Inc.*, 277 B.R. 51 (Bankr.D.Del.2002) (holding that debtor, under § 558, was entitled to exercise state law right of setoff); *In re Papercraft*, 127 B.R. 346 (Bankr.W.D.Pa.1991) (finding that either setoff or recoupment is available as a defense under § 558 and, if established, results in netting out of what each party owes the other).

17. Whether couched as setoff or recoupment, Zachry bears the burden of establishing it is entitled to reduce its payment obligation to CECM under the Service Agreement. *Davis Erection Co. v. Jorgensen*, 248 Neb. 297, 534 N.W.2d 746 (1995) (the party who pleads a setoff bears the burden of proving it); *Nathan v. McDermott*, 306 Neb. 216, 236, 945 N.W.2d 92, 108 (2020) (upholding trial court's grant of summary judgment on the affirmative defense of recoupment, when the defendants failed to meet their burden of proof).

18. Here, Zachry cannot, as a matter of law, establish a right to setoff under the terms of the Service Agreement because (1) Zachry terminated the Services Agreement for convenience under section 16.2, preventing CECM from completing any of its work in progress; (2) Zachry did not provide notice to CECM of any alleged defective work; and (3) Zachry did not give CECM an opportunity to inspect and correct any alleged defective work following Zachry's termination of the Service Agreement for convenience.

A. The Service Agreement Does Not Permit Zachry to “Backcharge” or “Withhold Payment” from CECM Following a Termination

19. The Service Agreement is governed by Nebraska law. (Ex. 1, section 20.4). Under Nebraska law, “a court faced with a question of contract interpretation must first determine whether the contract is ambiguous.” *Home Instead, Inc. v. Florance*, 721 F.3d 494, 498 (8th Cir. 2013); *accord City of Sidney v. Mun. Energy Agency of Neb.*, 301 Neb. 147, 917 N.W.2d 826, 843 (2018). “[T]he determination of whether a contract is ambiguous is a threshold issue for the court to decide.

Big River Const. Co. v. L & H Props., Inc., 268 Neb. 207, 681 N.W.2d 751, 756 (2004). A court determines whether ambiguity exists on an objective basis, reviewing the contract as a whole. *See Home Instead*, 721 F.3d at 498; *accord Big River*, 681 N.W.2d at 756 (“A contract must be construed as a whole, and, if possible, effect must be given to every part thereof.”).

20. “‘A written contract which is expressed in clear and unambiguous language is not subject to interpretation or construction,’ and a court simply must give effect to that language.” *Home Instead*, 721 F.3d at 498; *accord City of Sidney*, 917 N.W.2d at 843. “[T]here is a strong presumption that a written instrument correctly expresses the intention of the parties” and “parties are bound by the terms of the contract even though their intent may be different from that expressed in the agreement.” *Bedrosky v. Hiner*, 230 Neb. 200, 430 N.W.2d 535, 539 (1988).

21. Here, the terms of the parties’ agreement are clear. As a time and materials subcontract, CECM’s scope of work was to “furnish qualified, experienced, and competent personnel and management knowledgeable and trained to perform electrical installation and other required electrical services as needed on a Time and Materials basis per Zachry design and/or as directed by Zachry management.” (Ex. 1, p. 25, at § [1].2.4).

22. CECM was to “be paid for actual Work performed, as authorized by Zachry’s project management and measured in the field by his duly authorized representative, however no such authorization shall be effective if the amount exceeds the NOT TO EXCEED amount, unless Seller first obtains an approved Change Order, in accordance with Article 11.” (Ex. 1, p. 7, at Art. 2 ¶ 2).⁵

⁵ Originally, the NOT TO EXCEED amount of Service Agreement was \$5,000,000. (Ex. 1, at p. 6, at Art. 2 ¶ 1). On April 11, 2024, Zachry executed a Change Order increasing the NOT TO EXCEED amount of Service Agreement to \$10,000,000.00. (Ex. 2).

23. The Service Agreement distinguishes between terminations for cause and convenience, each with separate rights and remedies. (See Ex. 1, sections 16.1 and 16.2). Termination for cause expressly requires that Zachry first provide notice to CECM of any alleged issues, and then allow CECM an opportunity to cure such issues within 7 days, before Zachry may terminate CECM for cause and then pursue “any other right or remedies available under the Service Agreement.” (Ex. 1, at § 16.1).

24. On the other hand, termination for convenience allows Zachry to terminate CECM with only 2 business days notice, and once notice of termination is given, CECM is required to “terminate the Work as instructed by Zachry.” (Ex. 1, at § 16.2). Pursuant to Article 16.2, the remedy to CECM for termination for convenience is that: “Zachry shall pay to [CECM], in full satisfaction and discharge of all liabilities and obligations owed to [CECM] with respect to the Work so terminated, an amount equal to the sum of:

- a. All amounts due pursuant to this Agreement up to the termination date; and
- b. All [CECM]’s actual, verifiable reasonable and necessary costs of such termination (including any costs reasonably incurred by [CECM] in performing services under this Article 16.2), but not any amounts for unabsorbed overhead, anticipated profits or lost opportunity, nor shall liability for termination expenses exceed the remaining unpaid Agreement Price.” (Ex. 1, section 16.2).

25. Neither section 11.9 or 10.1.3 permit Zachry to reduce its obligations to CECM following a termination for convenience under section 16.2. Moreover, Zachry did not provide timely notice to CECM of its intent to invoke these provisions. Zachry’s Objection to CECM’s Claim should be overruled.

26. Debtors first argue that Article 11.9 allowed Zachry to perform work on CECM behalf and charge the labor back to CECM. This “backcharge” provision requires Zachry to give CECM written notice⁶ before performing work on CECM’s behalf, regardless of whether the “work performed be in contention or agreed.” (Ex. 1, section 11.9).

27. Further, and more importantly, Article 11 **does not survive termination of the Service Agreement**. The Service Agreement specifically identifies which provisions survive termination or expiration of the Agreement, including for example, the provisions governing the parties’ rights and obligations with respect to indemnity, insurance, warranty, confidentiality, and termination. (Ex. 1, section 20.11). Article 11 does not survive. All of the alleged defective and incomplete work and related “backcharge” costs were asserted by Zachry *after* Zachry terminated the Service Agreement for convenience.⁷

28. Similarly, Debtors’ dependence on section 10.1.3 of the Service Agreement, which identifies Zachry’s right to withhold payments from CECM if CECM is in default of its contractual obligations, is misplaced.

29. Section 10.1.3 only permits Zachry to withhold payment “on an invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect Zachry from loss because of... Defective Work not remedied by Seller...” This provision clearly contemplates that Zachry’s right to withhold payment is limited to the amount that may be necessary to address defective work performed by CECM, but only in the event that CECM fails to remedy the alleged

⁶ The Service Agreement specifically defines what it means to give “Notice” or “Notify” a Party pursuant to the Agreement. (See Ex. 1, section 20.1, and *Definitions* at p.5). This section requires that Notice be in writing, signed by the Party giving such notice, and delivered by email or mail to a designated Party representative. Here, there is no evidence that notice was provided in conformance with the Service Agreement.

⁷ The alleged date that work was performed by Zachry and ICS was from May 30, 2024, until December 6, 2024. (Doc. 2339, Doc. 2339-1, 2339-2, 2339-3, 2339-4). The “backcharge notifications” are dated October 10, 2024, through January 31, 2025, but the “backcharge notifications” were not actually provided to CECM until February 20, 2025, in the Bankruptcy Proceeding. (*Id.*).

defective work. Again, the Service Agreement contemplates that CECM will have notice and an opportunity to remedy or cure any alleged issues with its work before Zachry is entitled to backcharge or reduce CECM's right to payment under the Service Agreement.

30. This interpretation is also supported by the language in the last two paragraphs of Article 10, whereby Zachry was required "should [it] dispute any particular invoice(s) rendered or amount(s) paid," to "so Notify [CECM] in writing within ten (10) days receipt of the same. Zachry will pay Seller on the undisputed balance where such amounts are clearly separable from disputed amounts." (Ex 1, p.14). Nor was Zachry required to make payment to Seller "after ten (10) days written notice to Seller when... Seller is in material breach of this Agreement and Seller has not commenced to cure the same..." (*Id.*)

31. Before Zachry terminated the Service Agreement on May 15, 2024, it never provided CECM with written notice that it was withholding payment under Article 10 of the Service Agreement due to alleged defective work, or for any other reason.

32. Further, as one might expect, Article 10 of the Service Agreement *does not survive termination of the Service Agreement*. Once Zachry terminated the Service Agreement for Convenience, it was not entitled to unilaterally withhold payment from CECM under section 10.1.3.

33. In contrast to sections 10.1.3 and 11.9, section 12.2 — the provision that governs warranties — does survive termination of the agreement. (See Ex.1, sections 20.11 and 12.2). However, section 12.2 also requires Zachry to notify CECM of any defective work discovered, and "afford [CECM] the opportunity to redesign, repair, or replace the Defective Work within the required time." (Ex. 1, section 12.2.1). Zachry is only allowed to redesign, repair, or replace the Defective Work at CECM's expense, if such notice and opportunity to correct the Defective Work

is provided first. As there is no genuine issue of material fact that Zachry terminated the contract for convenience, its attempt to assert a “backcharge” or “withhold payment” following the termination for convenience must fail as a matter of law, and summary judgment is appropriate.

B. Zachry Cannot Claim Setoff Because It Terminated the Contract for Convenience

34. When Zachry unilaterally made the decision to terminate the Service Agreement for convenience, it relinquished its right to setoff under the Service Agreement. Courts have consistently recognized that a termination for convenience precludes the terminating party from later asserting claims for defects or additional costs, as the terminated party is deprived of the opportunity to inspect and cure any alleged deficiencies, a right typically permitted in terminations for cause. *Shelter Prods., Inc. v. Steelwood Constr., Inc.*, 307 P.3d 449, 461 (Or. Ct. App. 2013). *See also Paragon Restoration Grp., Inc. v. Cambridge Square Condos.*, 42 A.D.3d 905, 906 (N.Y. App. Div. 2007) (defendant-owner’s counterclaim should have been dismissed against plaintiff to the extent that it sought an offset for the costs of completing the project because, “[w]here [defendant] elects to terminate for convenience ..., whether with or without cause, it cannot counterclaim for the cost of curing any alleged default”).

35. Indeed, a termination for convenience, when invoked, enables the terminating party to limit the liability it would otherwise face for “a termination action that would otherwise constitute a breach of contract.” *A.J. Temple Marble & Tile, Inc. v. Long Island R.R.*, 659 N.Y.S. 2d 412, 414 (N.Y. Sup. Ct. 1997), *aff’d* 256 A.D.2d 526 (N.Y. App. Div. 1998).

36. When a contract provides for both termination for default and convenience, the terminating party must elect to terminate for default, to preserve any future claims for damages from default. *See Tishman Constr. Corp. v. City of New York*, 228 A.D.2d 292, 293 (N.Y. App. Div. 1996). General language indicating that a termination does not prejudice the terminating party’s

other rights or remedies is insufficient to preserve future claims for damages from default. *Shelter Prods., Inc.*, 307 P.3d at 459.

37. Nor can a party terminate for convenience and attempt to later treat the termination as one for cause because the termination for cause process was “simply too complex” or otherwise inconvenient. *Tishman Constr. Corp.*, 228 A.D.2d at 293. This is because, enabling a terminating party to invoke termination for convenience and later sue for default or raise an offset permits the terminating party to “pursue two inconsistent paths simultaneously: both terminating the agreement for convenience *and* seeking damages against [the terminated party] as it had terminated for cause and given [the terminated party] an opportunity to cure.” *Shelter Prods., Inc.*, 307 P.3d at 459 (emphasis in original).

38. The Nebraska Court of Appeals has recognized the difference between termination for convenience and termination for cause. In *Freedom Specialty Contracting Inc. v. Nichol Flats, LLC*, a construction contractor sought to recover for breach of contract from the project owner for a wrongful termination. *Freedom Specialty Contracting Inc. v. Nichol Flats, LLC*, 28 Neb.App. 797, 950 N.W.2d 109 (2020). The owner counterclaimed for breach of contract. *Id.*

39. The owner claimed that the parties’ oral agreement for the contractor to follow a compressed schedule, as opposed to the schedule contained in the written contract, was an enforceable modification of the written contract. *See id.* at 811, 950 N.W.2d at 119. After the contractor failed to meet the schedule as defined by their verbal agreement, the owner had terminated the contractor for cause. *Id.* at 807, 950 N.W.2d at 117. The trial court found the owner had wrongfully terminated the contractor, and the contractor was entitled to damages. *Id.* at 809–10, 950 N.W.2d at 118. The Nebraska Court of Appeals reviewed the lower court’s decision *de novo*. *Id.* at 810, 950 N.W.2d at 119.

40. On appeal, the court first agreed that the contractor was not in breach of its schedule obligations and determined that the owner had wrongfully terminated the contract without cause. *Id.* at 813–16, 950 N.W.2d at 120–22. However, the owner asked the appellate court to find that its termination was not wrongful, because it was a termination for convenience, not cause. *Id.* at 816, 950 N.W.2d at 122. The court rejected this assertion for two reasons. First, the termination of convenience clause still required the owner to provide written notice and pay the contractor for payment for work executed, which the owner had not done. *Id.* Second, the court found the owner “made clear its intention . . . to terminate [the contractor] for cause.” *Id.* at 816, 950 N.W.2d at 122–23.

41. Although the owner did not explicitly say in its termination notice that it was terminating for cause, the court found the remedy that the owner elected and referenced in its termination notice showed the owner’s intent to elect to terminate for cause. *Id.* at 816–17, 950 N.W.2d at 122–23. Specifically, in its notice of termination, the owner apprised the contractor that it would supplement the contractor’s work and hold it liable for additional costs – both remedies for offsets. *Id.* The court found these remedies to be “precisely the type[s] of remedy provided for under [the termination for cause clause,]” and, therefore, indicative of the owner’s intent to terminate for cause, not convenience. *See id.* In other words, even when the termination notice is silent, the owner’s selection of remedy at the time of termination is determinative in distinguishing a termination for cause from one for convenience.

42. The *Freedom Specialty Contracting* decision supports the principle that a termination for convenience is not interchangeable with a termination for cause: the remedies and respective rights of the parties following a termination for convenience are limited, because the

terminated party has no opportunity to contest the termination. The remedy of offset is reserved for terminations for cause, not terminations for convenience.

43. Here, Zachry's termination notice was clear. There is no dispute that Zachry made the unilateral decision to terminate CECM for convenience. Zachry specifically cited section 16.2 of the parties' agreement, titled the letter "Notice of Termination for Convenience," and specified within the body of the letter, that "you are hereby notified that Zachry hereby terminates this Agreement for its convenience." (Ex. 3).

44. When Zachry terminated CECM for convenience, it did not identify or reference any events of default under section 16.1.2 of the Service Agreement. Nor did Zachry request that CECM "commence to cure" any alleged deficiencies at the time of termination for convenience or after the subcontract was terminated. Instead, Zachry invoked its right to unilaterally terminate for convenience, and directed CECM to demobilize and submit an invoice for all of CECM's work on the Project through May 17, and to fully turn over the site to Zachry by May 20, 2024.

45. Because Zachry elected to terminate the Service Agreement for convenience, Zachry is estopped from now asserting, almost a year later, that CECM was in default when Zachry terminated the agreement in May of 2024. Enabling Zachry to unilaterally terminate CECM's contract for convenience and also seek damages as if it had terminated for default and provided CECM with the requisite notice and opportunity to cure such default, would constitute a bait-and-switch. When Zachry terminated for convenience, CECM was given no opportunity to finish its work or cure any alleged deficiencies. Zachry cannot now claim there were deficiencies in CECM's unfinished work when it halted CECM's performance and ordered CECM to demobilize from the Project.

II. CECM Was Entitled to a Right to Cure at Common Law

46. CECM had a contractual right to cure any work that Zachry alleged was deficient. As discussed previously, the Service Agreement contains multiple provisions that entitled CECM to notice and opportunity to cure any alleged issues with its work. Even article 16.1.2, which provides the process for termination for default, entitles CECM to a seven-day cure period following notice before Zachry can terminate the contract for cause. These contractual cure notice requirements are judicially enforceable. *See, e.g., Bruning Seeding Co. v. McArdle Grading Co.*, 232 Neb. 181, 185, 439 N.W.2d 789, 791 (1989); *Tennessee Gas Pipeline Co. v. Technip USA Corp.*, No. 01-06-00535-CV, 2008 WL 3876141, at *20 (Tex. App. Aug. 21, 2008) (pipeline owner failed to give written notice to contractor of alleged defective workmanship and opportunity to remedy same, thus, it failed to avail itself of remedy under contract for defective workmanship).

47. However, setting aside the express notice and cure rights in the Service Agreement, CECM was also entitled to notice and the right to cure any deficiencies at common law. Every contract contains an implied right to cure. *Centerplan Constr. Co. v. City of Hartford*, 274 A.3d 51, 78 (Conn. 2022) (“Under our common law, when a contract is silent as to notice and cure rights, the right to cure is implied in every contract as a matter of law unless expressly waived.”). *Accord, e.g., McClain v. Kimbrough Constr. Co.*, 806 S.W.2d 194, 198 (Tenn. Ct. App. 1990).

48. This right entitles the defaulting party both to notice of the specific default and an opportunity to cure such default. *Centerplan Constr. Co.*, 274 A.3d at 412. Notice requires apprising the breaching party of the specific deficiencies in performance warranting termination, and the notice should allow a reasonable amount of time for the breaching party to cure. *Id.*; *Blaine Econ. Dev. Auth’y v. Royal Elec. Co.*, 20 N.W.2d 473, 477 (Minn. Ct. App. 1994).

49. Failure to give the defaulting party reasonable notice and an opportunity to cure renders a termination for default wrongful. *See id.* (notice that did not sufficiently apprise other

party of inadequate performance and requirement to cure rendered termination wrongful); *see also* *Bruning Seeding Co.*, 232 Neb. 181, 185–86, 439 N.W.2d 789, 791–92 (Neb. 1989) (finding general contractor’s failure to comply with notice requirements to be a breach of contract).

50. A party who has wrongfully terminated a contract by failing to give notice and an opportunity to cure may not claim an offset for defective work discovered after the wrongful termination. *See Conway Constr. Co. v. City of Puyallup*, 490 P.3d 221, 227–28 (Wash. 2021) (en banc); *Magnum Constr. Mgmt. Corp. v. City of Miami Beach*, 209 So.3d 51, 55 (Fla. Dist. Ct. App. 2016)

51. Further, under the doctrine of avoidable consequences, a terminating party seeking damages has a duty to mitigate damages and avoid economic waste. *Borley Storage & Transfer Co., Inc. v. Whitted*, 271 Neb. 84, 95, 710 N.W.2d 71, 80 (2006); *A-1 Track & Tennis, Inc. v. Asphalt Maint., Inc.*, No. A-99-433, 2000 WL 781371, at *5 (Neb. Ct. App. 2000). Although an injured party may seek damages for repairing defective work, it cannot seek recompense for the cost of repairs that exceed their value. *A-1 Track & Tennis, Inc.*, 2000 WL 781371, at *5. A party’s failure to mitigate damages generally precludes damages that could have been mitigated or avoided. *Harmon Cable Comms. of Neb. Ltd. P’ship v. Scope Cable Television*, 237 Neb. 871, 889–90, 468 N.W.2d 350, 363 (Neb. 1991).

52. A terminating party can mitigate damages and avoid economic waste by granting the defaulting party an opportunity to cure. *See McClain*, 806 S.W.2d at 198. Cure notice is “designed to allow the defaulting party to repair the defective work, to reduce the damages, to avoid additional defective performance, and to promote the informal settlement of disputes.” *Id.* By failing to give cure notice, the terminating party forecloses an opportunity for the defaulting party to repair work, reduce damages, or avoid additional defective performance, all of which

could mitigate the terminating party's damages. *Cf. id.* As such, denying a defaulting party the opportunity to cure violates the terminating party's duty to mitigate damages and avoid economic waste.

53. Despite its contractual and common law obligations, Zachry failed to give CECM appropriate notice and an opportunity to cure any alleged issues with CECM's work. Zachry terminated the Service Agreement on May 15, 2024, and asked CECM to stop all work in progress, demobilize, and turn over the site by May 20, 2024. After the termination, when Zachry allegedly discovered issues with CECM's work, Zachry did not at any point provide CECM, or its counsel, an opportunity to inspect, investigate, or cure any alleged deficiencies before engaging a third party to complete the alleged repair work. By denying CECM an opportunity to cure, Zachry also failed to mitigate its damages and avoid economic waste. As such, Zachry is not entitled to seek a setoff or reduction of CECM's damages as a matter of law.

III. Zachry's Failure to Timely Notify CECM of the Alleged Issues Has Also Prejudiced CECM in this Contested Matter

54. A party must preserve what it knows, or reasonably should know is relevant in the action, or is reasonably calculated to lead to the discovery of admissible evidence. *Clark v. Randalls Food*, 317 S.W.3d 351, 357 (Tex. App. 2010) (citing *Trevino v. Ortega*, 969 S.W.2d 950 at 957 (Tex. 1998) (Baker, J., concurring)). Although a party need not take extraordinary measures to preserve evidence, a party has a duty to exercise reasonable care in preserving potentially relevant evidence. *Miner Dederick Const., LLP v. Gulf Chem. & Metallurgical Corp.*, 403 S.W.3d 451, 466 (Tex. App. 2013). A claim that the evidence was destroyed in the ordinary course of business will not excuse the obligation to preserve when a party's duty to preserve evidence arises before the destruction. *Miner*, 403 S.W.3d 451 at 466 citing *Adobe Land Corp. v. Griffin, L.L.C.*, 236 S.W.3d 351, 359 (Tex. App. 2007).

55. Zachry terminated the Service Agreement on May 15, 2024, less than a week before filing its petition for Bankruptcy. (Ex. 3). Zachry apparently reviewed the Service Agreement and its contractual options for terminating CECM prior to notifying CECM of the termination, because Zachry specifically referenced Section 16.2 of the Service Agreement in its termination notice. Zachry is a sophisticated party that both drafted the Service Agreement and drafted the Notice of Termination.

56. At some point after terminating CECM for convenience, Zachry also determined it would attempt to “backcharge” or “withhold” payment from CECM under the Service Agreement. And yet, Zachry did not provide notice to CECM of any alleged defective work to allow CECM to (1) inspect the alleged defects; (2) document the alleged defects; (3) determine a remedy or fix to address the alleged issues; and (4) perform the work to correct or address the alleged issues.

57. The alleged date that corrective work was performed by Zachry and ICS was from May 30, 2024, until December 6, 2024. (Doc. 2339, Doc. 2339-1, 2339-2, 2339-3, 2339-4). During this time, CECM was performing work for Zachry under four other subcontracts, and CECM had manpower and resources available to perform corrective work on the Service Agreement, if necessary. Zachry chose not to notify CECM of the alleged issues.

58. CECM made a claim on Zachry’s surety bond on June 4, 2024, putting Zachry on notice of its claims for payment under the Service Agreement. CECM then filed its Proof of Claim in the Bankruptcy on August 27, 2024. The “backcharge notifications” are dated October 10, 2024, through January 31, 2025, but the “backcharge notifications” were not actually provided to CECM until February 20, 2025, in the Bankruptcy Proceeding.

59. By the time Zachry notified CECM of the “backcharges” in February 2025, the alleged defective work had already been remedied. In other words, with full knowledge of CECM’s

claims for payment, Zachry did not take steps to preserve evidence of the alleged defective work and give CECM an opportunity to inspect and investigate the then-existing conditions on the site.

60. At the same time Zachry was allegedly performing corrective work, CECM was performing work for Zachry on the same OPPD projects under four other subcontracts. Despite this, Zachry did not take steps to preserve the conditions or work Zachry now alleges it observed on site from May 30, 2024, until December 6, 2024.

61. Zachry's failure to give the requisite notice under the Service Agreement amounts to a refusal to allow CECM to inspect and investigate Zachry's claims in real time, before the conditions were destroyed. CECM has been prejudiced by Zachry's failure to preserve relevant evidence, and Zachry should be estopped from now attempting to claim defective or incomplete work to reduce its liability to CECM in the Bankruptcy Proceeding.

CONCLUSION

For the foregoing reasons, Commonwealth Electric Company of the Midwest respectfully requests that the Court enter summary judgment in its favor on the affirmative defenses and claims raised by Debtors in their Objection to the Claim (Claim No. 1003), including that (i) because Zachry terminated the Services Agreement for convenience under section 16.2, CECM was prevented from completing any of its work in progress; (ii) Sections 10.1.3 and 11.9 and of the Service Agreement did not survive Zachry's termination for convenience; (iii) Zachry's claims for backcharges and offsets for incomplete and/or defective work are in all parts denied; and (iv) that even if Sections 10.1.3 and 11.9 survived Zachry's termination of the Service Agreement, Zachry failed to provide CECM the required notice and opportunity to cure or remedy any alleged incomplete or defective work and Zachry's claim that it is entitled to withhold payment from CECM to offset costs incurred by Zachry is denied, and for such other relief as is just and proper.

ANDREWS MYERS P.C.

/s/ T. Josh Judd

T. JOSH JUDD

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asvane@woodsaitken.com

**COUNSEL FOR COMMONWEALTH
ELECTRIC COMPANY OF THE MIDWEST**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 23, 2025, a true and correct copy of the foregoing Motion served via the Court's CM/ECF system on all parties requesting notice.

/s/T. Josh Judd

T. Josh Judd

EXHIBIT A

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

ZACHRY HOLDINGS, INC., <i>et al.</i> ¹	)	CASE NO. 24-90377 (MI)
)	
DEBTORS	)	CHAPTER 11
)	
	)	(Jointly Administered)
)	

**DECLARATION OF NOAH THORNTON IN SUPPORT OF PLAINTIFF COMMONWEALTH
ELECTRIC COMPANY OF THE MIDWEST’S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Declarant, being first duly sworn on his oath, states as follows:

1. I am an individual residing in Omaha, Dougals County, Nebraska.
2. I am over eighteen years of age and have personal knowledge of all matters set forth in this Declaration.
3. I am a Senior Project Manager for Commonwealth Electric Company of the Midwest (“CECM”). I have been employed at CECM since March of 2023, and prior to that I was a project manager for another electrical subcontractor in Omaha.
4. CECM is a Nebraska corporation with its principal place of business in Lincoln, Nebraska.
5. CECM is a full-service electrical and low voltage contractor in Nebraska that specializes in large and small-scale commercial and industrial electrical work. CECM is a leading provider of electrical services in the mid-western United States.

¹ The last four digits of Zachry Holdings, Inc.’ 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 identification numbers may be obtained on the website of the Debtors’ proposed claims agent and noticing agent at www.veritaglocal.net/ZHI. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

6. At some point prior to August 2023, Omaha Public Power District entered into an Engineering, Procurement, and Construction Contract with Zachry Industrial, Inc. (“Zachry”), as general contractor, for the design and construction of two power generation facilities in Nebraska: the Turtle Creek Electrical Power Generation Facility in Omaha, Sarpy County, Nebraska (“Turtle Creek”) and the Standing Bear Lake Station Electric Power Generation Facility in Omaha, Douglas County, Nebraska (“Standing Bear Lake”) (collectively, the “Projects”).

7. Zachry obtained a payment bond from Travelers Casualty and Surety Company of America (“Travelers”), and Pacific Indemnity Company (“Pacific”), as co-sureties, identified as Travelers Bond No. 107261753 and Pacific Bond No. 82455022 (the “Bond”).

8. Exhibit 1 is a true and correct copy of the Bond.

9. On or about August 11, 2023, CECM entered into five subcontract agreements with Zachry to provide labor and materials on the Turtle Creek and Standing Bear Lake Projects (collectively referred to hereafter as the “Subcontracts.”)

10. The largest of the Subcontracts, Identified as Contractor Project No. ZII #115001-605028 (“Subcontract 605028”), was for CECM to perform electrical work on the Standing Bear Lake Project on a time and materials basis.

11. I was the Senior Project Manager for CECM that oversaw CECM’s work on Subcontract 605028.

12. When CECM’s crew first mobilized to the Standing Bear Lake Project to perform work under Subcontract 605028, Zachry was nearly 60% complete with its construction work.

13. CECM was hired to supplement Zachry’s team, and we were asked to supply a supplemental labor force to perform electrical work on site along with Zachry’s crews and

another electrical subcontractor, ISC Constructors, under Zachry's supervision and at Zachry's direction.

14. Exhibit 2 is a true and correct copy of the Service Agreement.

15. Originally, the NOT TO EXCEED amount of the Service Agreement was \$5,000,000. However, on April 4, 2024, Zachry issued Change Order No. 1 increasing the NOT TO EXCEED amount of the Service Agreement by another \$5,000,000, bringing the total amount to \$10,000,000.

16. In addition, Change Order No. 1 for the Service Agreement also extended the demobilization milestone date for CECM's electric support to remain on site through June 30, 2024.

17. Exhibit 3 is a true and correct copy of the Change Order No. 1 for the Service Agreement.

18. On or about May 15, 2024, Zachry terminated the Service Agreement for its convenience.

19. Exhibit 4 is a true and correct copy of the Notice of Termination for Convenience that I received from Zachry on May 15, 2024.

20. At the time Subcontract 605028 was terminated for convenience, Zachry had not paid CECM \$4,948,849.68 for work performed on the Service Agreement.

[Remainder of Page Intentionally Left Blank]

21. The amount unpaid on the Service Agreement includes CECM's March, April, and May 2024 invoices, which we submitted to Zachry on the following dates in the following amounts:

Invoice #	Invoice Date	Invoice Desc	Amount Inv	Amount Paid	Date Paid
70825	3/29/2024	MAR PAY APP	1,636,482.76	0.00	N/A
70826	4/30/2024	APR PAY APP	1,759,519.77	0.00	N/A
70827	5/22/2024	MAY PAY APP	1,702,969.61	0.00	N/A
<i>Less payment received (7/30/2024) for demobilization after termination</i>			<i>(150,122.46)</i>		
Total Unpaid			4,948,849.68		

22. At the time the Service Agreement was terminated for convenience, Zachry had not notified me or any representative of CECM that it believed our work was defective or incomplete.

23. At the time the Service Agreement was terminated for convenience, Zachry had not notified CECM that we were in default of any of our obligations under the Service Agreement.

24. Zachry directed CECM's crews performing work under the Service Agreement to demobilize from the site by May 20, 2024.

25. However, CECM continued to perform work under our other subcontracts with Zachry on both the Turtle Creek Project and the Standing Bear Project after the Service Agreement was terminated for convenience.

26. If Zachy discovered issues with CECM's work after the Service Agreement was terminated for convenience, CECM had the manpower and resources necessary to promptly address such issues on that project.

27. However, Zachry did not notify CECM that there were any issues with our work on the Service Agreement.

28. Zachry never requested that we perform corrective work or rework on the Service Agreement following the termination for convenience.

29. From March through June of 2024, I sent numerous requests to Zachry for an update on the status of CECM's outstanding payment for the Service Agreement.

30. At no point did Zachry say that it was withholding payment from CECM for alleged defective work on the Service Agreement or other issues with the work we performed on the Service Agreement.

31. By correspondence dated June 4, 2024, CECM provided Travelers and Pacific with notice of CECM's payment claims against the Bond for work performed under the Subcontracts, including the Service Agreement.

32. On August 23, 2024, CECM initiated this statutory payment bond lawsuit against the Sureties, Travelers and Pacific, as co-sureties of the Bond in the amount of \$5,359,030.62, plus interest and attorneys' fees as allowed by Nebraska law, which includes \$4,948,849.68 for the Service Agreement.

33. On August 27, 2024, CECM filed a proof of claim in the Bankruptcy Proceeding initiated by Zachry, seeking payment for \$5,359,030.62 (the "CECM Bankruptcy Claim"), \$4,948,849.68 of which is for the Service Agreement.

34. Exhibit 5 is a true and correct copy of the CECM Bankruptcy Claim.

35. On February 20, 2025, Zachry filed an Objection in the Bankruptcy Proceeding to the CECM Bankruptcy Claim (Claim No. 1003) [Doc. 2336] ("the Claim Objection").

36. A true and correct copy of the Claim Objection is attached as Exhibit 6.

37. The Claim Objection seeks to reduce the CECM Bankruptcy Claim for work CECM performed under the Service Agreement, the largest of the Subcontracts, due to backcharges and other damages Zachry allegedly incurred several months after it terminated CECM for its convenience.

38. In support of Zachry's Claim Objection, it has provided a Declaration from Raymond Boldt, a project estimator for Zachry.

39. Exhibit 7 is a true and correct copy of the Declaration of Raymond Boldt, including the attachments to his declaration.

40. I have reviewed the Declaration of Raymond Boldt in detail. The issues he raises in his declaration relate only to the Service Agreement.

41. I do not agree with the claims made by Raymond Boldt that CECM performed "incomplete and defective work" on the Service Agreement, and the project records maintained by CECM (and likely by Zachry as well) during our work on the Project do not support his claims either.

42. CECM was not notified of the alleged "incomplete and defective work" that is described in the Declaration of Raymond Boldt until February 20, 2025.

43. CECM was not allowed to inspect or investigate the alleged issues with our work on the Service Agreement until after such issues were already allegedly corrected by Zachry and other third parties.

44. For example, although the "Zachry back charge notifications (BCNs)", that total \$1,009,015, are dated October 10, 2024 (in the amount of \$523,308.85), October 10, 2024 (in the amount of \$149,344.61), October 31, 2024 (in the amount of \$228,332.87), and January 31, 2025 (in the amount of \$108,028.30), these BCNs were not provided to CECM on these dates.

45. Instead, the first time that CECM was provided with notice of the alleged backcharges was when the Claim Objection was filed in the Bankruptcy Proceeding on February 20, 2025.

46. CECM was not provided with notice of any of the other issues raised in the Declaration of Raymond Boldt, until the Claim Objection was filed on February 20, 2025.

47. Zachry and the Sureties have not notified CECM of any other defects or deficiencies with the work CECM performed on the Service Agreement aside from what is alleged in the Declaration of Raymond Boldt.

48. Nor have Zachry and the Sureties raised any issues with the work that CECM performed under the other four subcontracts with Zachry.

49. As of this date, Travelers and Pacific have not issued any payments to CECM under the Bond for any of the work performed pursuant to the Subcontracts.

50. As of this date, Zachry has not paid CECM for work performed in March 2024, April 2024, and May 2024 on the Service Agreement.

Executed at Omaha, Nebraska, this 23 day of May, 2025.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Noah Thornton, Senior Project Manager

EXHIBIT B

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

ZACHRY HOLDINGS, INC., <i>et al.</i> ¹	)	CASE NO. 24-90377 (MI)
)	
DEBTORS	)	CHAPTER 11
)	
	)	(Jointly Administered)
)	

**DECLARATION OF TROY DEATS IN SUPPORT OF PLAINTIFF
COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST’S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Declarant, being first duly sworn on his oath, states as follows:

1. I am an individual residing in Omaha, Dougals County, Nebraska.
2. I am over eighteen years of age and have personal knowledge of all matters set forth in this Declaration.
3. I am a Branch Manager for the Omaha office of Commonwealth Electric Company of the Midwest (“CECM”). I have been employed at CECM since 2008, and prior to that I was a Project Manager for Darland Construction.
4. CECM is a Nebraska corporation with its principal place of business in Lincoln, Nebraska.
5. CECM is a full-service electrical and low voltage contractor in Nebraska that specializes in large and small-scale commercial and industrial electrical work. CECM is a leading provider of electrical services in the mid-western United States.

¹ The last four digits of Zachry Holdings, Inc.’ 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 identification numbers may be obtained on the website of the Debtors’ proposed claims agent and noticing agent at www.veritaglocal.net/ZHI. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

6. At some point prior to August 2023, Omaha Public Power District entered into an Engineering, Procurement, and Construction Contract with Zachry Industrial, Inc. (“Zachry”), as general contractor, for the design and construction of two power generation facilities in Nebraska: the Turtle Creek Electrical Power Generation Facility in Omaha, Sarpy County, Nebraska (“Turtle Creek”) and the Standing Bear Lake Station Electric Power Generation Facility in Omaha, Douglas County, Nebraska (“Standing Bear Lake”) (collectively, the “Projects”).

7. On or about August 11, 2023, CECM entered into five subcontract agreements with Zachry to provide labor and materials on the Turtle Creek and Standing Bear Lake Projects (collectively referred to hereafter as the “Subcontracts.”)

8. The largest of the Subcontracts, Identified as Contractor Project No. ZII #115001-605028 (“the Service Agreement”), was for CECM to perform electrical work on the Standing Bear Lake Project on a time and materials basis.

9. Exhibit 2 is a true and correct copy of the Service Agreement.

10. I was the representative of CECM that was identified in section 20.1 of the Service Agreement to receive notices on behalf of CECM.

11. On or about May 15, 2024, Zachry terminated the Service Agreement for its convenience.

12. Exhibit 4 is a true and correct copy of the Notice of Termination for Convenience that I received from Zachry on May 15, 2024.

13. At the time the Service Agreement was terminated for convenience, Zachry had not notified me or any representative of CECM that it believed our work was defective or incomplete.

14. At the time the Service Agreement was terminated for convenience, Zachry had not notified me or anyone else at CECM that we were in default of any of our obligations under the Service Agreement.

15. Zachry directed CECM's crews performing work under the Service Agreement to demobilize from the site by May 20, 2024.

16. However, CECM continued to perform work under our other subcontracts with Zachry on both the Turtle Creek Project and the Standing Bear Project after the Service Agreement was terminated for convenience.

17. Zachry did not notify me that there were any issues with CECM's work on the Service Agreement.

18. Zachry never notified me that CECM was required to perform corrective work or rework on the Service Agreement following the termination for convenience.

19. At no point did Zachry notify me that it was withholding payment from CECM for alleged defective work on the Service Agreement or raise other issues with the work CECM performed on the Service Agreement.

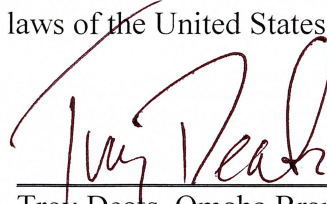
20. I was not notified of the alleged "incomplete and defective work" that is described in the Declaration of Raymond Boldt until February 20, 2025, when this document was filed with the Bankruptcy Court.

21. I was not provided with notice of any of the other issues raised in the Declaration of Raymond Boldt, until the Claim Objection was filed on February 20, 2025.

22. Zachry and the Sureties have not notified me of any other defects or deficiencies with the work CECM performed on the Service Agreement aside from what is alleged in the Declaration of Raymond Boldt.

Executed at Omaha, Nebraska, this 23 day of May, 2025.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Troy Deats, Omaha Branch Manager

EXHIBIT 1

Bond Number: 107261753 - Travelers
82455022 - Pacific**EXHIBIT R****PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we Zachry Industrial, Inc.
as principal, and Travelers Casualty and Surety Company and Pacific Indemnity Company

as surety, are held and firmly bound unto the Board of Directors of the Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska, with its principal place of business in the City of Omaha, Nebraska, in the penal sum of *
and for the payment of which we hereby bind ourselves, our successors and assigns jointly and severally and firmly by these presents,

*One Hundred Eighty-Three Million, One Hundred and Three Thousand, Nine Hundred Eighteen Dollars (\$183,103,918.00)

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above bound Zachry Industrial, Inc.

has been awarded by the Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska, the Contract for **

a copy of which Contract (the "Contract Documents" comprising same) together with all of their terms, covenants and conditions and stipulations, are incorporated herein and made a part hereof, as fully and amply as if said Contract Documents were recited at length herein.

**Engineer, Procure, and Construct the District's Standing Bear Lake and Turtle Creek Generating Stations, Contract No. 263406

NOW THEREFORE, if said principal herein shall in all respects fulfill this Contract according to the terms and tenor thereof and shall faithfully discharge the duties and obligations therein assumed, then the above obligation is to be void and of no effect; otherwise, to be and remain in full force and virtue in law. It is expressly agreed that this bond is given to secure and does secure not only the faithful performance by the principal herein named of said Contract for the construction Work and warranties applicable thereto as specified in said Contract Documents in strict accordance with the terms thereof, but that it is given to secure and does also secure the payment by the said named principal of all just claims for Material and supplies used or consumed in the construction of the Work in the connection therewith as in said Contract contemplated and for the payment of all laborers and mechanics for all labor performed in the Work thereof in said Contract or otherwise in conformity with the provisions of Section 52-118 Revised Statutes of Nebraska, 1943, as amended.

And the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents, or to the Work to be performed thereunder, shall in any way affect its obligations under this bond, and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract Documents, or to the Work, or to the Specifications.

Signed this 21st day of September, 2021.

Zachry Industrial, Inc.

Principal

By 

Travelers Casualty and Surety Company
Pacific Indemnity Company

Surety

By 

Donald E. Miller, Jr.
Attorney-In-Fact

EXHIBIT A



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Donald E. Miller Jr.** of **SAN ANTONIO**, Texas, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2026



Anna P. Nowik
 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **21st** day of **September**, 2021.



Kevin E. Hughes
 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

EXHIBIT A



Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Deborah L. Jung, Catherine M. Martinez, Donald E. Miller Jr., Michael N. Venson, S. West Warren and Thomas E. Whitney of San Antonio, Texas -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 7th day of January, 2020.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY
County of Hunterdon

ss.

On this 7th day of January, 2020 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2318888
Commission Expires July 18, 2024

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 21st day of September, 2021



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:

Telephone (908) 903-3493

Fax (908) 903-3656

e-mail: surety@chubb.com

EXHIBIT 2



ZACHRY INDUSTRIAL, INC.
 Agreement #115001-605028
 Oracle Tracking #605028
 OPPD Standing Bear Lake Generation Facility
 ZII Job #115001

SERVICE AGREEMENT

Between:

**ZACHRY INDUSTRIAL, INC. and COMMONWEALTH ELECTRIC COMPANY OF THE
MIDWEST**

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Signature

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ZACHRY INDUSTRIAL, INC.
Agreement #115001-605028
Oracle Tracking #605028
OPPD Standing Bear Lake Generation Facility
ZII Job #115001

SERVICE AGREEMENT

This service agreement ("Agreement") by and between **ZACHRY INDUSTRIAL, INC.** ("Zachry"), a Texas corporation with principal offices at 527 Logwood Avenue, San Antonio, Texas 78221, and **COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST** ("Seller"), a Nebraska corporation with principal offices at 3910 South Street, Lincoln, NE 68506, becomes effective when signed by the last party whose signing makes the Agreement fully executed ("Effective Date"). The parties to the Agreement may be referred to individually as "Party" or collectively as "Parties."

RECITALS

- A. Zachry has entered into a contract with Omaha Public Power District ("Owner"), for the construction of the Standing Bear Lake Electric Power Generation Facility ("Project") at Omaha, Douglas County, Nebraska ("Site").
- B. Zachry and Seller wish to enter into an agreement in which Seller will furnish certain Work in connection with the Project.

NOW, THEREFORE, in consideration of the mutual agreements set forth in the Agreement Documents, the Parties agree as follows:

DEFINITIONS

Affiliate shall mean in relation to any Person, any other Person: (i) which directly or indirectly controls, or is controlled by, or is under common control with, such Person; (ii) which directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; (iii) which has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person; or (iv) who either holds a partnership interest in such Person or such Person holds a partnership interest in the other Person. For purposes of this definition, the word "controls" means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise. The term "Affiliate" includes subsidiaries or parents.

Agreement or Agreement Documents shall mean those documents identified in Article 6 of this Agreement.

Agreement Price shall mean the price stated in Article 2.

Change shall mean an addition, deletion or revision in the Work.

Change of Control shall mean (1) the sale of all or substantially all the assets of Seller; (2) any merger, consolidation or acquisition of Seller with, by or into another corporation, entity or Person (including and Affiliate, subsidiary or parent of Seller); or (3) any change in the ownership of more than fifty percent (50%) of the voting capital stock of Seller in one or more related transactions.

Change Order shall mean an agreement in writing (using the Change Order Form, Attachment E-2) entered into after the execution of this Agreement and pursuant to the Agreement Documents, signed by Zachry and Seller, authorizing and approving a Change, adjustments in the Agreement Price or Schedule, adjustments in guarantees and warranties or in scheduling or other matters which change the Agreement.

Change Order Request shall mean notification by Seller to Zachry (using the Change Order Request form, Attachment E1) of a particular act or omission of Zachry, which Seller believes, is or may become a Change.

Chronic Failure shall mean a substantially similar failure occurring two or more times in a six (6) month period.

Claims shall mean all claims, causes of action, costs, damages, demands, disputes, expenses, liabilities and losses of every kind, including, without limitation, judgments, fines, penalties, interest, attorneys' fees, expert fees, court and arbitration costs, and legal expenses.



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Correction Period shall mean within thirty (30) days after a Notice of a failure to meet Performance Guarantees.

Cost to Complete shall mean all costs and expenses incurred in completing the Work, including, without limitation, reasonable additional overhead to affect takeover and completion of the Work.

Defective Work shall mean Work that fails to satisfy the requirements of this Agreement.

Delivery shall mean and shall be deemed to have occurred on the date the individual Materials (provided such Materials substantially conforms to the Specifications and requirements of this Agreement) have been delivered, with no apparent damage which would impact Zachry's ability to install the Materials, to the delivery point as evidenced by a bill of lading signed by the carrier.

Drawings shall mean (a) drawings furnished by Zachry as a basis for bids, (b) supplementary drawings furnished by Zachry to clarify and to define in greater detail the intent of the Agreement, (c) drawings submitted by Seller with its bid, provided such drawings are accepted by Zachry in writing, (d) drawings furnished by Zachry to Seller during the progress of the Work provided such drawings are consistent with the Work and do not add or modify the scope of Work under this Agreement unless pursuant to a Change Order, and (e) drawings and engineering data submitted by Seller during the progress of the Work, provided such drawings and data are accepted by Zachry in writing.

Effective Date shall mean the date given in paragraph one of this Agreement.

Excusable Delay Events (Force Majeure) with respect to Seller's timely performance of the Work shall mean acts of God, fire, flood or other natural disasters, unanticipated weather events that are unavoidable and unusually severe for the Work location, war, labor disputes, embargo, supplier delays, shortage of goods or materials, transportation interruptions, tariffs, pandemics, court order, riot or intervention of any government authority and similar events beyond Seller's reasonable control that prevent Seller from completing Work according to the Schedule.

Hazardous Substances shall mean any substances, the release of which into, or the presence of which in, the environment gives rise to any liability or obligation to remove, clean up, encapsulate or otherwise remediate such release or presence thereof under any Laws.

Indemnified Party shall mean Zachry, Owner, its and their respective Affiliates, and its and their respective officers, directors, partners, consultants, agents, and employees or Seller, its and their respective Affiliates and its and their respective officers, directors, partners, consultants, agents and employees.

Laws shall mean any law, code, statute, regulation, rule, ordinance, judgment, injunction, or other court order, or other requirement of a governmental authority having jurisdiction over any Party, the Work, Project or the design, construction or operation thereof, and which is valid and applicable thereto.

Materials shall mean all materials, supplies, goods, and equipment, which are to be used by Seller to complete the Work or incorporated as a part of the Work on the Project.

Milestone Dates shall mean those dates stated in Article 8.1 or elsewhere in the Agreement.

Non-Excusable Delay Events shall mean any act or omission of Seller or its Subcontractors or any other event or occurrence that may interfere with or delay the Work that is not specified as an Excusable Delay Event.

Notice or Notify shall mean a notice in writing given to the Party's designated representative deemed duly given on the date of receipt.

Owner shall mean the entity with which Zachry has entered into a contract to perform certain work and is identified in paragraph A of the Recitals in this Agreement.

Party or Parties shall mean Zachry and Seller, as defined in paragraph one of this Agreement.

EXHIBIT B



ZACHRY INDUSTRIAL, INC.
 Agreement #115001-605028
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 OPPD Standing Bear Lake Generation Facility
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Person shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Authority or other entity of whatever nature.

Project shall mean the work described in paragraph A of the Recitals of this Agreement, which Zachry will perform for the Owner.

Schedule shall mean schedule of milestones applicable to the Work as revised from time to time pursuant to the provisions of the Agreement Documents.

Schedule of Values shall mean the schedule of Seller's Work activities and milestones, which serve as a basis for computing partial payments.

Seller shall mean the entity identified in paragraph one of this Agreement and may be used interchangeably with the word "Seller" or "Vendor" in the various attachments to this Agreement.

Site shall mean the physical location of the Project identified in paragraph A of the Recitals of this Agreement or applicable off-site address provided by Zachry.

Specifications shall mean those documents attached to this Agreement which specify the general, supplemental, and technical requirements that the Work must meet and which consist of technical descriptions of the Work and cover administrative details applicable thereto.

Subcontractor shall mean any licensor, subcontractor, employee leasing company, Seller, or vendor, of any tier that provides and/or incorporates Materials, equipment, tools, supplies, goods, personnel, labor or services used in connection with the performance by Seller of its obligations under the Agreement.

Warranty Period shall mean that duration stated in Article 12.2.

Warranty Work shall mean all needed adjustments, repairs, additions, corrections, or replacements, which arise out of or are necessitated by Defective Work, including, without limitation, repairs or replacement of Materials and equipment.

Work shall mean all Materials, equipment, tools, supplies, goods, labor or services which are to be provided pursuant to this Agreement, and all obligations, duties, and responsibilities imposed on Seller by the Agreement Documents.

ARTICLE 1. SCOPE OF WORK

Seller shall furnish and/or perform all Work described in Exhibit A, and shall carry out all obligations, duties and responsibilities imposed on Seller by the Agreement Documents. Seller's Work shall include the following:

Seller shall furnish to Zachry upon completion of the Work one legible copy each of all laboratory, field or other notes, log book pages, technical data, computations, designs and other instruments of service prepared pursuant to this Agreement. Seller will maintain files containing all deliverable documentation, including, without limitation, calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this Agreement. Seller will provide copies of the information contained in its working files to Zachry upon request.

Seller agrees that its Work is exclusive to Zachry for this Project, and will not separately solicit or accept any assignment from Owner directly related to the Project during the term of the Agreement without Zachry's written approval.

ARTICLE 2. AGREEMENT PRICE

Zachry shall pay to Seller for the Work and Seller shall accept a sum of money computed at the time and material rates for the Work set forth in Attachment H, Schedule of Values. Seller shall accept as full compensation therefore, a sum **NOT TO EXCEED FIVE MILLION AND 00/100 Dollars (\$5,000,000.00)** (collectively the "Agreement Price") and is inclusive of Nebraska sales and use tax. Seller shall prepare with each invoice a cost breakdown, as required by Article 10 of this Agreement, that will identify separately materials and services subject to Nebraska sales and use taxes. Payments will be

EXHIBIT B



ZACHRY INDUSTRIAL, INC.
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made in U.S. Dollars, in the manner provided in the Agreement Documents. The Agreement Price shall not be modified or affected by any currency fluctuations between the U.S. Dollar and any other currencies. The not to exceed amount specified is based upon the rates and prices as shown in Attachment H.

Seller shall be paid for actual Work performed, as authorized by Zachry's project management and measured in the field by his duly authorized representative, however no such authorization shall be effective if the amount exceeds the NOT TO EXCEED amount, unless Seller first obtains an approved Change Order, in accordance with Article 11. Seller shall submit a Change Order Request, in the form of Attachment E-1, if its projections exceed the not to exceed amount.

ARTICLE 3. SCHEDULE

Except as otherwise provided in this Agreement, Seller represents that it can and shall perform and complete the Work in accordance with Zachry's Schedule. Seller acknowledges that the timely performance of the Work is essential to the timely completion of the Project. Seller shall commence Work on or about November 13, 2023 and complete Work on or about March 1, 2024, subject to Excusable Delay Events, unless otherwise agreed to in writing by Zachry and Seller.

ARTICLE 4. INDEMNITY

4.1 INDEMNIFICATION. IN CONSIDERATION OF TEN DOLLARS (\$10.00), THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, AND IN FURTHER CONSIDERATION OF THE MUTUAL PROMISES SET FORTH IN THIS AGREEMENT, PARTIES AGREE TO THE FOLLOWING INDEMNIFICATION OBLIGATIONS TO THE FULLEST EXTENT PERMITTED BY LAW.

4.2 GENERAL INDEMNITY. SELLER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE WORK, OR OTHER ACTIVITIES OF SELLER, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, FAULT, OR BREACH OF CONTRACT OF SELLER OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SELLER OR ANYONE FOR WHOSE ACTS SELLER MAY BE LIABLE.

4.2.1 THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF 1) INSURANCE COVERAGE, IF ANY, PROVIDED BY OWNER, ZACHRY, SELLER, OR ANY SUBCONTRACTOR; OR 2) DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

4.2.2 SUCH INDEMNITY OBLIGATIONS SHALL CONTINUE IN FORCE AND EFFECT NOTWITHSTANDING THE COMPLETION, TERMINATION, OR SUSPENSION OF THE WORK OR THIS AGREEMENT.

4.3 PATENT INDEMNITY. SELLER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RELATING TO INFRINGEMENT OR IMPROPER USE OF ANY PATENT, TRADE SECRET, PROPRIETARY RIGHT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE WORK. IF ANY SUCH CLAIM MATERIALLY IMPAIRS PERFORMANCE OF THE WORK, THEN SELLER, AT ITS SOLE EXPENSE, SHALL TIMELY PROCURE THE RIGHT TO CONTINUE ITS PERFORMANCE OF THE WORK IN ACCORDANCE WITH THE APPROVED SCHEDULE. FURTHER, IF AN INDEMNIFIED PARTY IS ENJOINED FROM THE USE OF ANY WORK, MATERIALS, COMBINATION OR PROCESS COVERED BY THIS AGREEMENT, THEN SELLER SHALL PROMPTLY EITHER: (1) SECURE TERMINATION OF THE INJUNCTION AND PROCURE FOR THE INDEMNIFIED PARTY THE RIGHT TO USE SUCH WORK, MATERIALS, COMBINATION OR PROCESS, WITHOUT OBLIGATION OR LIABILITY, OR (2) REPLACE SUCH WORK, MATERIALS, COMBINATION OR PROCESS, OR MODIFY THE SAME TO BECOME NON-INFRINGEMENT, ALL AT SELLER'S SOLE EXPENSE, AND SUBJECT TO ALL THE REQUIREMENTS OF THE AGREEMENT. NOTWITHSTANDING THE FOREGOING, SELLER SHALL HAVE NO OBLIGATION OR LIABILITY UNDER THIS ARTICLE 4.3 WITH RESPECT TO WORK MANUFACTURED IN ACCORDANCE WITH DESIGNS, PROCESSES, OR METHODS SPECIFICALLY REQUIRED BY ZACHRY IN WRITING.

4.4 INDEMNITY FOR BORROWED CONSTRUCTION EQUIPMENT. IF SELLER, BY RENTAL, LOAN OR OTHERWISE, MAKES USE OF ANY OF ZACHRY'S OR OWNER'S TOOLS, CONSTRUCTION EQUIPMENT,

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SCAFFOLDING, OR OTHER APPLIANCES, SELLER AGREES (1) TO ACCEPT SUCH TOOLS, CONSTRUCTION EQUIPMENT, SCAFFOLDING, OR OTHER APPLIANCES "AS IS," (2) THAT ITS USE OF SUCH TOOLS, CONSTRUCTION EQUIPMENT, SCAFFOLDING, OR OTHER APPLIANCES SHALL BE AT SELLER'S SOLE RISK IN THE SAME MANNER AS STATED IN ARTICLE 13.4 REGARDING SELLER'S CONSTRUCTION EQUIPMENT, AND (3) TO DEFEND, INDEMNIFY AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ALL CLAIMS OF EVERY NATURE ARISING OUT OF OR RELATING TO ITS USE OF SUCH TOOLS, CONSTRUCTION EQUIPMENT, SCAFFOLDING, OR OTHER APPLIANCES.

4.5 INDEMNITY FOR SAFETY VIOLATIONS. SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RELATING TO ANY FAILURE BY SELLER, ANY OF ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES TO COMPLY WITH THE SAFETY REQUIREMENTS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL APPLICABLE SAFETY LAWS.

ARTICLE 5. INSURANCE

5.1 GENERAL INSURANCE REQUIREMENTS. Seller shall provide and maintain, during the term of this Agreement (including all warranty periods, or as otherwise specified herein), occurrence-based insurance with coverage, and limits of liability not less than those shown herein. Seller shall require each Subcontractor to provide and maintain, during the term of their respective agreements (including all warranty periods, or as otherwise specified herein), the insurance coverages specified as follows, with any limits of liability determined appropriate by the Seller. All such insurance shall be primary and non-contributory to any insurance maintained by an Indemnified Party. Limits may be arranged through any combination of underlying and excess or umbrella policies. Seller shall pay all deductible amounts associated with the required insurance.

Prior to commencement of the Work, Seller shall furnish Zachry either insurance certificate(s) on the form attached as Attachment A (or equivalent form satisfactory to Zachry) executed by an authorized representative of Seller's insurer or, in the event of a claim, certified copies of insurance policies or certified copies of insurance summaries, with endorsements, evidencing the applicable policies, coverages, and limits. Upon Zachry's request, Seller shall also furnish Zachry such evidence of Seller's Subcontractors' coverage and limits. Zachry's receipt of or failure to object to any insurance certificates or policies submitted by Seller does not release or diminish in any manner the liability or obligations of Seller, or constitute a waiver of any of the insurance requirements under this Agreement. Replacement certificates of insurance evidencing continuation of Seller's coverage shall be furnished to Zachry at least thirty (30) days prior to the expiration of the current policies. The limits of liability shown for each type of insurance coverage to be provided by the Seller pursuant hereto are minimum limits only and do not limit Seller's liability or obligations hereunder or otherwise.

Each Seller and Subcontractor policy shall provide a waiver of each insurer's rights of subrogation against each Indemnified Party (except for professional liability policy). Each such policy, other than workers' compensation and employer's liability and professional liability, shall include each Indemnified Party as additional insured, on the form of endorsement attached as Attachment B, CG 2010, or its equivalent, for liability arising out of the Work and for completed operations shall include each Indemnified Party as an additional insured on the form CG 2037 or its equivalent, and shall include coverage as provided under standard ISO forms as respects separation of insured clause. No policy may limit the scope of protection for any of the insured less than the protection afforded the named insured.

Seller shall ensure Zachry receives Notice affecting Seller or its Subcontractors' insurance by Seller or Seller's insurer providing a minimum of thirty (30) days Notice to Zachry prior to cancellation, non-renewal, or material change of any of Seller's or any Subcontractor's insurance referred to herein. Unless otherwise agreed in writing by Zachry, all of Seller's and its Subcontractors' insurance shall be written with insurers licensed in the jurisdiction where the Work is to be performed, and such insurers shall maintain a current A.M. Best rating of at least "A - VII" or higher.

Failure of Seller to comply with the requirements of this Article 5, including the failure to furnish and maintain evidence of Seller's or its Subcontractors' insurance as required herein, shall be a breach of this Agreement. If Seller fails to comply with requirements of this Article, then in addition to its other remedies, Zachry may direct Seller to suspend performance of the Work at the Site until Seller demonstrates compliance.

5.2 REQUIRED COVERAGE. Insurance policies shall contain at a minimum the following coverages and limits:

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WORKERS' COMPENSATION (WC)

Statutory

Seller shall provide and maintain Workers' Compensation coverage with limits sufficient to meet those set by statutes of the state(s) in which the Work is to be performed.

Coverage shall include USL&H, Jones Act, Outer Continental Shelf Land Act, Maritime & Federal Employers Liability Act coverage & Defense Base Act, if applicable.

Coverage shall include all Partners, Proprietors, and Executive Officers.

Coverage shall include Other States coverage.

Seller shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance, or otherwise attempt to opt out of the statutory Workers' Compensation system.

EMPLOYER'S LIABILITY (EL)

Each Accident	\$1,000,000
Disease – Policy Limit	\$1,000,000
Disease – Each Employee	\$1,000,000

Coverage shall include all Partners, Proprietors, and Executive Officers.

COMMERCIAL GENERAL LIABILITY (CGL)

General Aggregate	\$2,000,000
Products/Comp-Op Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$ 50,000
Medical Expense (any one person)	\$ 5,000

Coverage shall include:

Coverage for bodily injury and property damage, product/completed operations (minimum 3 years past completion of project), independent contractor's liability, blanket contractual liability covering Seller's obligations under Article 4 (Indemnity) and coverage for hazards commonly referred to as XCU.

BUSINESS AUTOMOBILE LIABILITY (AL)

Combined Single Limit	\$1,000,000
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Coverage shall include all owned, non-owned and hired vehicles.

MCS-90 Endorsement shall be provided if Seller is hauling Hazardous Substances.

EXCESS (UMBRELLA) LIABILITY

In excess of and following form EL, CGL, & AL above	\$5,000,000
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CONTRACTOR'S EQUIPMENT

Covering all tools and construction equipment owned, leased, or borrowed by Seller, Subcontractors and their respective employees

Full replacement value of tools and equipment



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Zachry shall be named as a loss payee under such policy if such equipment is owned by, leased by or borrowed from Zachry.

ARTICLE 6. AGREEMENT DOCUMENTS

The following Agreement Documents comprise the entire Agreement between Zachry and Seller: Change Orders, this Agreement, exhibits and attachments to this Agreement, including, without limitation, the Specifications. Any conflict between the Agreement Documents shall be resolved by reference to the Agreement Document with the highest precedence determined by the order listed above. All Agreement Documents are incorporated herein by reference and are binding on the Parties as if fully set forth at length.

Should anything necessary for a clear understanding of the Work be omitted from the Agreement Documents, or should the requirements appear to be in conflict, the Seller shall secure written instructions from Zachry before furnishing the Work affected thereby.

ARTICLE 7. AFFILIATE

7.1 AFFILIATE. Seller agrees that an Affiliate may place Orders with Seller which incorporates the terms and conditions of this Agreement, and that the term "Zachry" shall be deemed to refer to an Affiliate, when an Affiliate places an Order with Seller under this Agreement. An Affiliate will be responsible for its own obligations, including, but not limited to, all charges incurred in connection with such Order; provided, however, that Zachry shall be responsible to Seller for any Orders placed by an Affiliate on the same terms and conditions as this Agreement.

ARTICLE 8. (RESERVED)

ARTICLE 9. PERFORMANCE OF THE WORK

9.1 SCHEDULING THE WORK. Seller shall begin performance of the Work when Notified by Zachry to proceed, and shall abide by the Schedule and scheduling requirements as established by Zachry, except as otherwise provided herein. To the best of its ability, Seller shall cooperate with Zachry in scheduling and performing the Work so as to promote the general progress of the entire Project and to avoid conflict, delay in or interference with the work of Zachry, Owner, and its and their respective, other contractors. Seller shall adhere to Zachry's work week, unless otherwise approved by Zachry.

9.2 TIMELINESS. Seller shall perform the Work in a prompt, efficient, safe, and diligent manner.

9.3 TOBACCO FREE WORKSITE. Seller shall, and shall cause its personnel and subcontractors to comply with Owner's policy, which states all Owner property and locations are tobacco free (including e-cigs).

9.4 SUBCONTRACTS. Seller shall not subcontract any Work, or use a third party or broker to furnish any labor for the Work, without the prior written consent of Zachry. Seller shall be solely responsible for the engagement and management of its Subcontractors in the performance of the Work, for the performance of Work by its Subcontractors and for all acts or omissions of its Subcontractors. Seller shall ensure that all Work furnished or performed by its Subcontractors conforms to the requirements of the Agreement Documents. Neither the consent by Zachry, nor anything contained herein, shall create any contractual relationship between any Subcontractor and Zachry or Owner.

No Subcontractor is intended to be or shall be deemed to be a third party beneficiary of this Agreement. Each agreement between Seller and any Subcontractor shall be in writing. An unpriced copy of each such agreement shall be provided to Zachry upon request.

9.5 SITE CONDITIONS. Seller shall have the sole responsibility to satisfy itself concerning the nature and location of the Work, the Site, and the general and local conditions, including, without limitation, the following:

- a. transportation, access, disposal, handling and storage of Materials;
- b. availability and quality of labor, water, electric power and road conditions;
- c. climatic conditions and seasons;

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- d. physical conditions at the Site and the Project as a whole;
- e. topography, subsurface and ground surface conditions; and
- f. construction equipment and facilities needed preliminary to and during the performance of the Work.

The failure of Seller to acquaint itself with any applicable conditions will not relieve Seller of the responsibility for properly estimating the difficulties or for the cost of successfully performing Seller's obligations in the time and manner provided under the Agreement Documents.

9.6 COMPLIANCE WITH LAWS. Seller shall fully comply with all Laws applicable to Seller and the Work, and shall maintain compliance with the current Laws throughout the duration of the Work.

9.7. ENVIRONMENTAL COMPLIANCE. In addition to all Laws applicable to Seller and the Work, Seller shall comply with all of Owner's and Zachry's Site environmental requirements, provided those environmental requirements are disclosed in writing to Seller, including, without limitation, those specified in this Article 9 and Attachment S.

9.7.1. ENVIRONMENTAL PERMITS, AUTHORIZATIONS AND PLANS. Seller shall comply with all government-required environmental permits, authorizations and plans applicable to the Work and obtained or prepared by the Owner or Zachry. Seller shall obtain any additional environmental permits and authorizations required by governmental authorities for the Work.

9.7.2 HAZARDOUS AND REGULATED SUBSTANCES. Seller shall safely and properly store, handle, treat and dispose of all Hazardous Substances it brings to the Site, uses or generates in connection with the Work. Seller shall immediately Notify Zachry if Seller knowingly encounters unanticipated Hazardous Substances at the Site. Seller shall furnish Zachry a complete list of all Hazardous Substances that it brings or will bring to the Site, including Hazardous Substances contained in equipment and the amounts thereof. For all such Hazardous Substances, Seller shall provide warning labels and instructional material appropriate to warn persons coming in contact therewith of the hazards and its effects.

9.7.3. UNANTICIPATED SUBSTANCES. If Seller or any Subcontractor knowingly encounters pre-existing or unanticipated Hazardous Substances at the Site, Seller and its Subcontractors shall immediately stop Work in the affected area and immediately Notify Zachry.

9.7.4. PETROLEUM AND CHEMICAL SUBSTANCE SPILLS. Seller shall immediately Notify Zachry of all petroleum and chemical substance spills occurring at the Site. Seller shall be responsible for all work associated with spill incidents caused by Seller, including, without limitation, emergency response activities, cleanup, waste disposal and government-required reporting and documentation. All spill incident remediation shall be coordinated with Zachry.

9.8 CLEANING UP. Seller shall at all times keep the Site and surrounding area clean and free from rubbish caused by Seller's operations. Prior to completing its Work in an area, Seller shall remove all accumulated rubbish and Seller's equipment, tools, machinery and materials. Seller shall dispose of all such rubbish in compliance with applicable Laws.

9.9 LABOR. Seller shall provide only skilled, competent workers and supervisors for the performance of its Work. Seller shall be responsible for assuring harmonious labor relationships on the Project among its workers. Seller shall immediately remove from the Project, when requested in writing to do so by Zachry, any person to whom Zachry reasonably objects, and such person may not thereafter reenter the Site without Zachry's prior consent.

9.10 INSPECTION OF THE WORK. Seller alone is responsible for the quality of its Work and for the proper inspection of its Work. Zachry and Owner have the right to inspect all or any portion of the Work designated by Zachry.

9.11 ARTIFACTS. In the event that any relics or items with archaeological or historical value are knowingly discovered by the Seller or any of its Subcontractors or any of their representatives or employees, the Seller shall immediately notify Zachry and await the Owner's decision before proceeding with any Work. Neither the Seller nor any of its Subcontractors, nor any of their representatives or employees shall have any property rights in such relics or items.

9.12 TAXES, LICENSES, PERMITS FEES AND PROFESSIONAL SKILLS.

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9.12.1 TAXES. If the service provided is considered to be a taxable service in the state in which the service is performed and Zachry does not provide Seller with a valid exemption or resale certificate in the form attached hereto as Attachment O, Seller must bill Zachry the applicable Nebraska sales and use tax amount on the taxable service to Zachry. Seller agrees to defend, indemnify and hold Zachry and Owner harmless against all Claims by any regulatory body or governmental authority arising out of any failure by Seller to remit taxes to the appropriate authorities relating to Seller's performance of the Work.

9.12.2 LICENSES, PERMITS, FEES AND PROFESSIONAL SKILLS. Seller is responsible for obtaining any and all licenses, certificates, permits, inspections, and other instruments required by Law to perform the Work. All costs related to such licenses, certificates, permits, inspections and any other instrument shall be paid by Zachry.

9.13 CORONAVIRUS (COVID-19). Zachry follows best practices and the Centers for Disease Control & Prevention (CDC) guidelines to protect their employees, partners, clients, and Subcontractors from COVID-19. If Seller, Seller's affiliates or its Subcontractors are required to be on Site, those Persons must follow the Site's COVID-19 protocol which may require, but not limited to, any Persons on Site be vaccinated against COVID-19.

9.14 REPRESENTATIVES. Each Party shall appoint a representative who shall be authorized to act on its behalf. Either party may appoint a replacement representative by giving Notice to the other party. Within ten (10) days after the Effective Date, Seller shall Notify Zachry of the name of its proposed representative for Zachry's approval.

9.15 STOP WORK ORDERS. If Seller fails to comply with any requirement of this Agreement, including safety and insurance requirements, Zachry shall have the right, but not the duty, to provide two (2) business days' notice to Seller to stop any portion of the Work affected by such failure. Seller shall immediately commence to cure the default and shall not resume the affected Work until such failure is remedied to the reasonable satisfaction of Zachry. Seller shall not be entitled to any Change Order on account of such Work stoppage unless it is due to an Excusable Delay.

9.16 (RESERVED)

9.17 (RESERVED)

9.18 CRIMINAL BACKGROUND CHECKS / DRUG SCREENING / ALCOHOL. If required in writing by Zachry Seller shall conduct a Criminal Background Check on all personnel BEFORE they arrive at Zachry's or Project Site. In such case, Seller shall conduct background checks on all personnel involved in the Work no more than 6 months prior to the start of such Work. If required, Seller shall conduct an initial background check in compliance with the guidelines set forth herein on each employee or temporary worker of Seller or Seller's subcontractors who will perform Services for Zachry under this Agreement that permit or require said individual/temporary worker to access Zachry's premises or provide direct or indirect access to Zachry's systems, networks, or customer information. Such check will cover (a) county(ies) criminal, state criminal, federal criminal records in all jurisdictions the individual resided or was employed in the past seven (7) years; (b) National Sex Offender Registry (c) terrorist watch list records (d) verification of eligibility to work in the United States (E-Verify) (e) industry specific checks; provided that, if a background check meeting these guidelines was completed in connection with the hiring of such individual within the last six (6) months it need not be repeated but does need to be done annually. If required by Zachry, actual costs for background checks shall be eligible for reimbursement by Zachry in accordance with Article 11 of this Agreement

If Zachry requires such background checks, Seller agrees that, subject to the contrary requirements of applicable law, no individual covered by that above has been convicted of any felonies or three or more misdemeanors involving alcohol, violence, theft or drug related offenses.

Seller agrees to verify all government issued identification by individual. Seller agrees to make all reasonable efforts to ensure that no individuals covered by that above are falsifying any of their identification credentials, including without limitation, their date of birth (DOB), Social Security Number (SSN), citizenship status, or work history. Seller agrees to remove any individual who has falsified their identification credentials immediately from performing Services for Zachry.



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ARTICLE 10. PAYMENT

10.1 SCHEDULE OF VALUES. Zachry and Seller have agreed to a Schedule of Values for Seller's Work activities to serve as a basis for computing partial payments. The Schedule of Values is attached hereto as Attachment H. The Schedule of Values shall be used as a basis for calculation of any Change Order.

10.1.1 PROGRESS PAYMENTS. Seller shall submit invoices in accordance with the Schedule of Values and/or as otherwise provided in the Agreement. For each such invoice, Seller shall furnish Zachry:

- a. a detailed invoice, in a form and content acceptable to Zachry, for the period ending on the last day of the preceding calendar month, setting out the time costs for the labor and/materials costs and any additional costs to be paid for by Zachry relating to the Work actually performed by Seller or incurred by Seller in such month based on the Schedule of Values, along with supporting documentation as Zachry may reasonably require to substantiate Seller's right to payment of the invoiced amounts;
- b. a progress report of Seller's Work for such month;
- c. Seller's Partial Waiver and Release of Liens, Affidavit of Bills Paid and Indemnification, completed and executed in accordance with the form as Attachment F;
- d. (reserved)
- e. two (2) copies of Seller's invoice to include:
 1. Seller's name and address.
 2. Accurate invoice date. (It's important to date the invoice as close to the mailing date as possible).
 3. Bill to Addressee (provided below)
 4. Agreement number and/or Oracle Purchase Order number, line item number(s), and any other authorizations for Work performed or Materials delivered.
 5. Detailed description of Work or Materials, including quantity, unit of measure, unit price, extended price and amounts of any Changes granted in accordance with Article 11.
 6. Seller's remit to address
 7. Contact information in case of invoice questions; include contact name, title, phone number and address.
 8. Invoice identification number.

Invoices and documentation may be submitted by either mail / express shipping or via electronic mail.

Submit invoice and documents to the following address:

Zachry Industrial Inc.
 Enterprise Accounting
 P. O. Box 240130
 San Antonio, TX 78224-0130
 - or -
enterpriseaccounting@zachrygroup.com

For Work actually performed or costs incurred, Zachry shall pay to Seller an amount equal to the approved invoice amount within thirty (30) days after Zachry's receipt of an approved invoice. Payment of Seller's invoices for Work actually performed to accomplish an activity or milestone shall not be due until after Seller has accomplished the applicable activity or milestone, according to the Schedule of Values.

10.1.2 PAYMENT NOT ACCEPTANCE. Payment to Seller shall not be construed as an acceptance or approval of the Work or constitute a waiver of any Claim or right that Zachry may then or thereafter have against Seller. Payments shall be subject to reasonable correction or adjustment in subsequent progress reviews and payments.

10.1.3 PAYMENTS WITHHELD. Zachry may withhold payment on an invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect Zachry from loss because of:

- a. Defective Work not remedied by Seller;
- b. Seller's failure to perform the Work in accordance with the Agreement Documents; or
- c. third-party Claims, suits or liens arising out of or relating to Seller's Work, except to the extent secured or



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provided for by insurance, bond or otherwise to Zachry's reasonable satisfaction.

10.2 **FINAL PAYMENT.** Zachry shall make the final payment of all sums due and owing to Seller, subject to withholding permitted hereunder, within sixty (60) days after (1) complete performance of Seller's Work on the Project in accordance with the requirements of this Agreement, (2) final approval and acceptance of Seller's Work by Zachry, and (3) Zachry's receipt from Seller of the following along with Seller's application for final payment:

- a. Seller's Final Waiver and Release of Liens, Affidavit of Bills Paid and Indemnification, completed and executed in accordance with the form as Attachment G;
- b. (reserved)
- c. (reserved);
- d. (reserved);
- e. other data in the form and to the extent reasonably required by Zachry;
- f. (reserved) and;
- g. two (2) copies of Seller's invoice to include:
 1. Seller's name and address.
 2. Accurate invoice date. (It's important to date the invoice as close to the mailing date as possible).
 3. Bill to Addressee (provided below)
 4. Agreement number and/or Oracle Purchase Order number, line-item number(s), and any other authorizations for Work performed or Materials delivered.
 5. Detailed description of Work or Materials, including quantity, unit of measure, unit price, extended price AND amounts of any Changes granted in accordance with Article 11.
 6. Seller's remit to address
 7. Contact information in case of invoice questions; include contact name, title, phone number and address.
 8. Invoice identification number.

Invoices and documentation may be submitted by either mail / express shipping or via electronic mail.

Submit invoice and documents to the following address:

Zachry Industrial Inc.
 Enterprise Accounting
 P. O. Box 240130
 San Antonio, TX 78224-0130
 - or -
enterpriseaccounting@zachrygroup.com

Should Zachry dispute any particular invoice(s) rendered or amount(s) paid, Zachry will so Notify Seller in writing within ten (10) days receipt of the same. Zachry will pay Seller on the undisputed balance where such amounts are clearly separable from disputed amounts. The Parties will use their best efforts to resolve invoicing and payment disputes expeditiously.

Notwithstanding anything to the contrary in this Agreement, Zachry shall have no obligation to make any payment to Seller, after ten (10) days written Notice to Seller when (1) Seller is in material breach of this Agreement and Seller has not commenced to cure the same or (2) Seller fails to furnish and maintain evidence of current insurance in accordance with the requirements of the Agreement Documents and has failed to cure the same.

ARTICLE 11. CHANGES AND DELAY

11.1 **CHANGE ORDERS.** A Change Order may be initiated by either Zachry or Seller in accordance with the terms of this Article 11. Agreement by both parties to any Change Order shall constitute a final settlement of all matters arising out of or relating to the Change, including all direct and indirect costs related to such Change and all adjustments to the Agreement Price and Schedule. Seller shall request all changes on the Seller's Change Order Request Form, Attachment E1. Change Orders shall be approved by both Seller and Zachry on the Change Order Form, Attachment E2.



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11.2 ZACHRY'S RIGHT TO REQUEST CHANGES. Zachry shall have the right at any time to request a Change. Zachry shall Notify Seller of any requested Change. Seller shall Notify Zachry of the effect of such Change as provided below, and shall take all reasonable steps to minimize the impact on the cost of and time for performance of the Work.

11.3 SELLER'S CHANGE ORDER REQUEST. If Seller believes that any act or omission by Zachry is or may become a Change, then, within ten (10) days of such act or omission, Seller shall Notify Zachry, using the Change Order Request Form (Attachment E-1), of the particular act or omission which it believes may require a Change, and Seller's actions to minimize the impact on the cost of and time for performance of the Work.

11.4 CHANGE ORDER REQUEST PROCEDURE. Seller's Change Order Request Form shall include a description of the Change (or alleged Change), and a detailed cost impact and schedule impact analysis identifying each impact item and its effect on the Agreement Price, Schedule and any other related rights and obligations of Seller under the Agreement. As soon as practicable after Seller's Change Order Request Form is delivered to Zachry, Zachry and Seller shall meet and negotiate in good faith whether a Change has occurred and, if so, an equitable adjustment to the Agreement Price, Schedule and any other rights and obligations of Seller under the Agreement. The final Change Order with agreed to Scope of Work, Price and Schedule Changes and/or Changes to the Agreement will be documented on the Change Order Form (Attachment E-2).

11.5 EXCUSABLE DELAYS (FORCE MAJEURE). If Seller is delayed at any time during the progress of the Work by any Excusable Delay Event, then Seller may be entitled to an extension to the Schedule. If Seller experiences an Excusable Delay Event, then Seller shall, within ten (10) days after such event, give Zachry Notice of the delay and any impact by the delay upon the Schedule. If Seller provides Zachry with the foregoing Notice and Zachry agrees that such event constitutes an Excusable Delay Event, then Seller shall be entitled to a day for day extension to the Schedule corresponding to the number of days of delay demonstrated by Seller to be directly caused by the Excusable Delay Event. If there is any dispute regarding whether the delay is an Excusable Delay Event or a Non-Excusable Delay Event, Zachry and Seller shall meet and negotiate in good faith whether an Excusable Delay Event has occurred.

11.6 NON-EXCUSABLE DELAYS. If Seller is delayed by any Non-Excusable Delay Event, then Seller shall not be entitled to any extension to the Schedule. Seller shall overcome such Non-Excusable Delay Event or events at no additional cost to Zachry.

11.7 NO DAMAGES FOR DELAY. In no event shall either party be entitled to any monetary compensation for any delay, whether or not excusable, and each party hereby waives and releases the other party from any and all Claims which arise out of any Excusable Delay Event or any Non-Excusable Delay Event. Should such delay be found to have been caused by Owner or Zachry, Seller may submit a Change Order Request.

11.8 RECORD KEEPING. The cost of a Change Order shall be determined on the basis of reasonable direct costs and savings of performing the Work attributable to the Change. Seller shall keep and present, in such form as Zachry may prescribe, an itemized accounting of such costs and savings with appropriate supporting documentation.

11.9 ZACHRY BACKCHARGE. Subject to written Notice by either Party. Zachry may be required or requested to perform certain work on the Seller's behalf, whether this work performed be in contention or agreed. Labor will be charged to Seller at the rate on the Schedule of Values. This rate is inclusive of all labor and indirect costs except third party rentals and materials which will be charged at Zachry invoice cost.

ARTICLE 12. WARRANTY

12.1 WARRANTY. Seller shall perform the Work:

- a. using the care, skill, and diligence normally applied by licensed professionals in the performance of work similar to that contemplated hereunder, and in accordance with sound industry practices and standards;
- b. in compliance with Laws;
- c. in accordance with all applicable manufacturer's requirements;
- d. in accordance with all applicable standards and codes;

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- e. in accordance with the provisions of this Agreement and all Drawings; and
- f. (Reserved)

12.2 **REMEDY.** Seller agrees to remedy in the time and manner provided herein and without cost to Zachry or Owner, any Defective Work of which it receives Notice within twenty-four (24) months after Zachry's final acceptance of the Work ("Warranty Period"). Upon such Notice, Seller shall promptly commence and proceed to perform Warranty Work. Seller shall conduct such Warranty Work on a reasonable_overtime schedule basis if Zachry or Owner reasonably determines such a schedule is necessary to avoid or minimize any delay in connection with the Project or any reduction in output of the Project. Seller is responsible for the cost of access to and uncovering of Defective Work. Seller shall bear the expense of making good all other property destroyed or damaged by its repair of Defective Work or as a result of Warranty Work. Seller shall, at Zachry's expense, perform such inspections and tests as Zachry may reasonably require to demonstrate that Warranty Work complies with this Agreement.

12.2.1 If Zachry or Owner has given Notice to Seller of the required date for correction of the Defective Work and afforded Seller the opportunity to redesign, repair, or replace the Defective Work within the required time and if:

- a. Seller fails to begin redesign, repair, or replacement promptly within five (5) days after receipt of Notice of any Defective Work; or
- b. Seller commences redesign, repair, or replacement within the five (5) day period but, in the reasonable judgment of Zachry, fails to diligently prosecute same; or
- c. in the case of emergency, where in the reasonable judgment of Zachry or Owner, delay could result in serious loss or damage to persons or property.

then Owner or Zachry may redesign, repair, or replace the Defective Work at Seller's expense, which may include the cost of a field service representative, repair materials, parts, labor, transportation, supervision, special tools, and supplies.

12.2.2 **CHRONIC FAILURE.** If Chronic Failure of components occurs during the Warranty Period, Seller shall, along with Zachry and Owner, investigate the root cause of the failure. Should the cause of the failure be the Seller's responsibility, Seller shall repair and shall replace or adjust components to correct the root cause of the Chronic Failure.

12.3 (RESERVED)

12.4 **SELLER'S WARRANTY OF TITLE.** Seller warrants to Zachry and Owner that title to all Work and Materials, and the right to use computer software, shall be free and clear of all liens, Claims, security interests, encumbrances, or other defects of title.

ARTICLE 13. PASSAGE OF TITLE AND RISK OF LOSS

13.1 **PASSAGE OF TITLE.** Title to the Work and any portion thereof shall pass to Zachry upon the earlier of 1) payment or 2) Delivery. After such transfer of title and upon Zachry's written request, Seller shall execute and deliver to Zachry a bill of sale and other instruments of conveyance, assignment and transfer, in order to vest in Zachry good and marketable title to the Work, free and clear of all liens, Claims, security interests, encumbrances, or other defects of title.

13.2 **RISK OF LOSS.** Regardless of which Party has title, Seller shall bear the risk of loss and shall repair or replace, at Seller's cost, any portion or all of the Work which is lost, damaged or destroyed prior to the earlier of (1) final acceptance of the Work by Zachry or (2) substantial completion of the Project by Zachry, regardless of how such loss or damage shall have occurred. Upon the earlier of (1) final acceptance of the Work by Zachry or (2) substantial completion of the Project by Zachry, risk of loss of the Work shall pass to Zachry and Zachry thereafter shall be responsible for loss or damage to the Work, excluding loss or damage resulting from Defective Work or the acts or omissions of Seller, in which case Seller shall repair or replace the Work at Seller's cost.

13.3 **PROTECTION OF THE WORK.** Seller shall take necessary precautions to properly protect the Work and the property of others from damage caused by Seller's operations. If Seller's operations or if defective Work causes damage to the Work or property of Owner, Zachry or others, then Seller shall promptly remedy such damage to the satisfaction of



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Zachry, or Zachry may so remedy and Seller shall immediately reimburse Zachry the costs thereof.

13.4 **RISK OF LOSS FOR SELLER'S CONSTRUCTION EQUIPMENT.** Seller shall bear the risk of loss and shall repair or replace, at Seller's cost, any portion or all of Seller's construction equipment which is lost, damaged or destroyed,. Seller's construction equipment shall include, without limitation, all tools, supplies, construction equipment, or other personal property owned, leased, borrowed, or used by Seller, any of its Subcontractors, or any of their respective agents or employees.

13.5 (RESERVED)

ARTICLE 14. LIENS

Unless Zachry is in default of its payment obligations under this Agreement, Seller shall not permit or allow to exist any lien or other encumbrance upon the Site or any Work or other property of Zachry or Owner by Seller or any person claiming by, through or under Seller, including, without limitation, Subcontractors and any Affiliates of Seller or its Subcontractors. If any such lien or encumbrance is imposed, Seller shall immediately cause such lien to be discharged or provision therefor to be made by a bond or other security acceptable to Zachry.

ARTICLE 15. CONFIDENTIALITY

15.1 **NONDISCLOSURE.** Seller shall not disclose to any third party any proprietary or confidential information regarding the Work, the Project or Owner's or Zachry's business affairs, finances, technology or processes without Zachry's prior written consent. Such information and documents shall not be used for any purpose other than Seller's performance of the Work under this Agreement. The contents of this Agreement are proprietary and confidential.

15.2 **DISCLOSURE REQUIRED IN LEGAL ACTION.** If Seller is required by Laws or in connection with legal proceedings to disclose information that is otherwise required to be maintained in confidence pursuant to this Article 15, then Seller may disclose such information, provided, however, that Seller shall immediately notify Zachry of the requirement to disclose and the terms thereof prior to the actual disclosure, and shall minimize the disclosure of the information to the extent allowable under Laws. If disclosure is required, then Seller shall use its best efforts to obtain proprietary or confidential treatment of the information by the third party to whom the information is disclosed, and will, to the extent such remedies are available, seek protective orders limiting the dissemination and use of the information. Nothing herein diminishes Zachry's right to challenge any Laws or legal proceeding requiring the disclosure.

15.3 **NO ADVERTISING.** Seller shall not, without Zachry's prior written consent, advertise or publish any information concerning the Project, the Work, Owner, Zachry, or the fact that Seller has entered into this Agreement with Zachry or agreed to perform the Work required hereunder.

15.4 **OWNER INFORMATION.** Neither Seller nor any agent or affiliate of Seller shall, except as is required to perform the Work hereunder, (a) copy or otherwise duplicate any of Owner's records or documents of any nature, including but not limited to, legal documents, or disclose same to any other person, firm, corporation or any other entity for any purpose, or use same for Seller's own or any third party's financial gain; and/or (b) disclose to any third person, or use for Seller's own financial gain, any "Confidential Information" (as defined below) learned or acquired by Seller during the term of this Agreement unless such Confidential Information has become or shall first become publicly available from sources other than Owner who have not previously breached an obligation of confidentiality with Owner. The only exception to the foregoing shall be disclosures required by valid order or subpoena issued by a court of competent jurisdiction and in such case, Seller shall cooperate with Owner in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. The term "Confidential Information" shall mean the results of any studies or reports prepared by Seller or any information obtained by Seller in carrying out the Work; information and compilations of information relating to Owner's business, known or made available to Seller and its authorized agents and employees, including, but not limited to, customer information and data, technical or legal information with respect to the details of Owner's process(es) and/or facility(ies) plans, designs, formulas, business processes, methods, inventions, discoveries, computer programs; and legal or financial information with respect to Owner's business, customers or sales efforts and pricing information. Seller acknowledges that all documents and tangible things provided to Seller by Owner (including diskettes and any other medium containing information gathered in the course of performance of the Work) are the property

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of Owner. Upon termination of this Agreement for any reason, Seller shall immediately deliver to Owner all such documents and tangible things, including, but not limited to, legal documents, contracts, technical information, prospective customer lists and information, supplier lists and supplier information, pricing lists and pricing information, and financial information concerning Owner. Seller acknowledges that Seller's violation of any provision or covenant contained in this provision will result in irreparable injury to Owner for which no adequate remedy may be available, and Seller accordingly consents to the issuance of an injunction prohibiting any conduct by Seller in violation of this provision without the requirement of posting a bond, the same being hereby waived by Seller. Injunctive relief shall not be construed to be Owner's exclusive remedy for violation of any provision or covenant contained in this Agreement.

ARTICLE 16. TERMINATION; SUSPENSION

16.1 TERMINATION FOR CAUSE

16.1.1 INSOLVENCY OF SELLER. If any proceeding is instituted against Seller seeking to adjudicate Seller as a bankrupt or insolvent, or if Seller makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Seller, or if Seller files a petition seeking to take advantage of any Law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts and, in the case of any such proceeding instituted against Seller but not by Seller, such proceeding is not dismissed within sixty (60) days after such filing, then, without prejudice to any other rights or remedies available under the Agreement Documents, or at law or in equity, Zachry may terminate Seller's right to perform all or any part of the Work. Notwithstanding the foregoing, if an order for relief under Chapter 11 of the Bankruptcy Code is entered with respect to Seller during the term of the Agreement, Seller acknowledges and agrees that it will, subject to bankruptcy court approval, formally assume or reject, subject to the requirements of 11 U.S.C. § 365, the Agreement within seven (7) days of delivery of Notice for such action by Zachry. If Seller fails to timely move for approval or rejection of the Agreement, it acknowledges and agrees that (1) it will not contest or in any way otherwise take any action to oppose such a motion filed by Zachry or the lifting of the automatic stay of 11 U.S.C. § 362 to permit Zachry to enforce its rights under the Agreement (the "Lift Stay Order"); (2) it waives all rights it may have under 11 U.S.C. § 362(f); (3) it hereby consents to the ex-parte entry of the Lift Stay Order pursuant to 11 U.S.C. § 362(f); and (4) at the option of Zachry, it hereby agrees that it will execute an agreed Lift Stay Order on forty-eight (48) hours Notice. Each Party acknowledges and represents to each other and agrees that (1) each is familiar with the Agreement and the importance of completing the Agreement on time and within its term; and (2) based upon such familiarity, it is critical to performance of the Agreement that Zachry have prompt and immediate access to its contractual remedies under the Agreement in the event of a default hereunder by Seller.

16.1.2 DEFAULT. Seller shall be in default of its obligations under this Agreement if upon two (2) business days' notice to Seller and a failure to commence to cure the same, Seller refuses or fails to:

- a. repeatedly perform the Work in accordance with the requirements of the Agreement Documents;
- b. repeatedly dedicate to the Work sufficient properly skilled personnel;
- c. make prompt payment of undisputed invoices due to its Subcontractors;
- d. achieve substantial completion or final completion of the Work on or before the applicable completion dates, subject to the terms and provisions of this Agreement;
- e. or
- f. perform any of its obligations under this Agreement.

In addition, if such refusal, failure, or default continues for seven (7) days after receipt of Notice from Zachry thereof (except that such seven (7) day cure period shall not apply with respect to clause (d) above), then, without prejudice to any other rights or remedies available under the Agreement Documents or at law or in equity, Zachry may terminate Seller's right to perform all or any part of the Work.

16.1.3 PAYMENT OBLIGATIONS. If Zachry terminates Seller's right to perform for cause, then:

- a. Seller shall not be entitled to receive further payments under this Agreement except that Zachry shall pay Seller for Work which is not terminated all amounts due pursuant to this Agreement up to the termination date and pursuant to Article 2.



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16.2 TERMINATION FOR CONVENIENCE. Zachry may terminate this Agreement for its convenience in whole or in part at any time without cause by its two (2) business day Notice of such termination, issued after conferring with Seller and Seller shall terminate the Work as instructed by Zachry. Upon termination pursuant hereto, Zachry shall pay to Seller, in full satisfaction and discharge of all liabilities and obligations owed to Seller with respect to the Work so terminated, an amount equal to the sum of:

- a. all amounts due pursuant to this Agreement up to the termination date; and
- b. all Seller's actual, verifiable reasonable and necessary costs of such termination (including any costs reasonably incurred by Seller in performing services under this Article 16.2), but not any amounts for unabsorbed overhead, anticipated profits or lost opportunity, nor shall liability for termination expenses exceed the remaining unpaid Agreement Price.

Seller shall provide its request for termination related costs within thirty (30) days after the date of Zachry's Notice of termination and shall be accompanied by accounting records and documentation that will reasonably support the calculation and amount of Seller's Claim.

16.3 ZACHRY'S RIGHTS. If Zachry elects to terminate Seller's right to perform for cause or for convenience, then Zachry shall so Notify Seller and Seller shall discontinue performance of the Work as directed by Zachry. Without prejudice to any other rights or remedies available under the Agreement Documents or at law or in equity, at Zachry's request and at Seller's expense, Seller shall:

- a. assist Zachry in preparing an inventory of all Materials delivered, installed or in storage, whether on or off the Site;
- b. (reserved);
- c. assign to Zachry (or to any replacement contractor designated by Zachry) all subcontracts, purchase orders, and other contractual agreements as may be necessary and useful for the completion of work by others as designated by Zachry and assign to Zachry all warranties for Materials furnished or Work completed prior to termination;
- d. (reserved);
- e. deliver to Zachry all information reasonably requested by Zachry for the completion of the Work; and
- f. deliver or make available to Zachry all Work performed by Seller, including, without limit, Materials prepared or provided by Seller, as Zachry may request.

16.5 SUSPENSION. Zachry may direct Seller to suspend performance of the Work, in whole or in part, at any time and from time to time, by Zachry's Notice of suspension. Seller shall suspend the Work as instructed by Zachry, and shall resume the suspended Work as promptly as practicable following Zachry's Notice of resumption. In the event of a suspension pursuant to this Article 16.5, the Schedule shall be extended to take into account any delay resulting from such suspension. The Agreement Price shall be increased by the amount of increase, if any, in the substantiated direct costs actually incurred by Seller and demonstrated by Seller to be over and above those in the Agreement Price, but only to the extent such costs are reasonable and necessary and result directly from Zachry's suspensions of Work; provided however, the Schedule shall not be extended and the Agreement Price shall not be increased if the suspension is determined by Zachry to be necessary due to Seller's failure to perform the Work as required under the Agreement Documents.

16.6 ZACHRY DEFAULT. If Zachry defaults by failing to pay Seller amounts under this Agreement or any other breach of this Agreement, Seller may, in its sole discretion, suspend its performance of the Work upon written notice to Zachry stating the breach until the default is cured, and such suspension shall be without liability or obligation to Zachry or any third party, and without prejudice to any additional rights and remedies of Seller pursuant to this Agreement. If any such default is not cured within thirty (30) days' notice of the same, Subcontractor shall have the right to terminate this Agreement upon written notice to Zachry.

16.7 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Notwithstanding any provision to the contrary, in no event shall either Party or their subcontractors be liable to the other Party in connection with this Agreement for any indirect, incidental, consequential, punitive, special or other similar damages, whether or not due to the fault or negligence of a Party, and regardless of whether the other Party has been advised of the possibility of such damages or losses.

16.8 LIMITATION OF LIABILITY. Except with respect to (a) Seller's indemnity obligations herein, and (b) any damages resulting from Seller's breach of Article 15, the total liability, in the aggregate, of Seller, its Subcontractors, and its and their officers, directors, shareholders, employees, agents, and consultants to Zachry for any and all claims, losses, liabilities,



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costs, or damages whatsoever arising out of, resulting from the Work from any form of negligence, professional errors or omissions (including breach of contract or warranty) of Seller, its officers, directors, employees, agents, or consultants shall not exceed the amount of fees paid by Zachry to Subcontractor in the six (6) month period immediately preceding the act or omission causing such damage or loss.

ARTICLE 17. DISPUTE RESOLUTION

17.1 **NEGOTIATION.** The Parties commit to first try to settle any dispute arising out of or related to this Agreement through direct discussions of their management representatives, then by direct discussions of their senior officers, if necessary. If the Parties' senior officers cannot resolve the dispute within thirty (30) days after a party delivers written Notice of such dispute, then the parties shall proceed to mediation.

17.2 **MEDIATION.** Following unsuccessful attempts to resolve disputes in accordance with Article 17.1 above, either Party may deliver a request for mediation to the other party. Upon mediation being invoked, the Parties shall have five (5) working days to agree on a mediator. Mediation proceedings shall take place in Omaha, Nebraska, and must be concluded within sixty (60) days after the date of receipt of the request for mediation. Each Party will pay its own costs and an equal share of other costs of the mediation. Mediation shall be a condition precedent to the initiation of any adjudicative action or proceeding.

17.3 **LITIGATION.** If the Parties cannot resolve the dispute by mediation in accordance with Article 17.2 above, then the Parties agree that such dispute shall be decided by litigation pursuant to this Article 17.3. Litigation of any dispute shall be brought exclusively in a federal or state court within Omaha, Nebraska. Each Party hereby consents to personal jurisdiction in any legal action, suit, or proceeding brought in any court, federal or state, within Omaha, Nebraska, having subject matter jurisdiction and irrevocably waives, to the fullest extent permitted by Law, any claim or any objection it may now or hereafter have, that venue or personal jurisdiction is not proper with respect to any such legal action, suit, or proceeding brought in such a court in Omaha, Nebraska, including any claim that such legal action, suit, or proceeding brought in such court has been brought in an inconvenient forum. **EACH PARTY, HAVING HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH LEGAL COUNSEL, ALSO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO A JURY TRIAL IN LITIGATION PURSUANT TO THIS ARTICLE 17.3 OR ANY LEGAL PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT.**

17.4 **NO INTERRUPTION OF WORK.** Except as otherwise provided herein, there shall be no interruption of the Work during the pendency of any dispute that may arise between the Parties; provided however, this Article 17 shall not limit or restrict the effectiveness of Zachry's orders suspending or terminating Seller's performance under this Agreement.

17.5 **PRECEDENCE.** This Contract will not be held to the terms and conditions, payment terms, and liquidated damages associated with the Prime Contract between the Owner and Zachary. In the event of a conflict between or among the Prime Contract and this Contract, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

ARTICLE 18. SAFETY; DRUG AND ALCOHOL POLICY

18.1 **SAFETY.** Seller shall perform the Work at all times in a safe and prudent manner, and shall seek to avoid bodily injury as well as loss or damage to property, by taking reasonable steps to protect:

- a. Seller's employees and other persons at the Site;
- b. Materials stored at the Site or at off-site locations; and
- c. all property and structures located at the Site, whether or not involved in the Work.

Seller shall continuously and diligently inspect all Work to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. Seller shall develop, adopt, implement and enforce, with respect to Seller's Work at the Site, comprehensive safety policies and programs which, at a minimum, comply with all Laws and satisfy Zachry's Safety Requirements included in this Agreement by reference and summarized in Attachment C. Seller shall provide a Fatigue Risk Management Systems Plan for Work to be performed on the Site in accordance with ANSI/API Recommended Practice 755 First Edition, April 2010. The full Safety requirements of Zachry



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will be made available upon request. Seller shall coordinate with Zachry site manager and attend weekly Site safety meetings.

18.2 DRUG AND ALCOHOL PROGRAM REQUIREMENTS. Seller shall and shall require its Subcontractors to develop, adopt, implement and enforce, with respect to their Work at the Site, comprehensive drug and alcohol policies and programs which, at a minimum, satisfy Zachry's Drug and Alcohol Program Requirements included in this Agreement by reference and summarized in Attachment D. The full Drug and Alcohol policy of Zachry will be made available upon request. Seller's policies and programs shall include provisions for the auditing by Seller of its Subcontractors' policies and programs.

Seller represents and warrants that it and its Subcontractors shall assign and allow to Work at the Site only those employees who have current negative drug screen results under their employer's anti-drug program. A current result is one based on the most recent drug screen performed within thirty (30) days of the day on which Work is to be performed.

Before performing Work at the Site, Seller shall furnish and cause each of its Subcontractors to furnish Zachry with documentation of their respective anti-drug programs demonstrating that each program meets or exceeds the requirements of Zachry's Drug, Alcohol and Illegal Items Policy, a summary of which is attached hereto as Attachment D and meets or exceeds the requirements of any Law. Complete records of the anti-drug program shall be kept at Seller's and each Subcontractor's home office, respectively, and be available for audit by Zachry or Owner during regular office hours. Failure or refusal by Seller or a Subcontractor to establish and maintain a satisfactory anti-drug program, keep adequate records of it, or permit Zachry or Owner to audit compliance with it shall be grounds for immediate suspension of Seller's and its Subcontractor's Work or termination of this Agreement.

Before performing Work at the Site, Seller and each Subcontractor shall certify to Zachry in a writing signed by an executive officer of the employer that each employee (identified by name, Social Security Number or employee I.D. number and date of drug screen result) who will perform Work at the Site has a current negative drug screen result under the employer's anti-drug program. Such certification shall be kept current throughout the duration of the Work, and Notice of any change in an employee's certified status shall be given by the employer to Zachry in writing immediately. Zachry may exclude from the Site any Seller or Subcontractor employee who does not have a current certification, and any delay in the performance of Work due to lack of properly certified employees will be for the account of Seller.

ARTICLE 19. CYBER SECURITY

Seller shall implement and maintain sufficient cyber security measures to protect against unauthorized access, use, disclosure, modification, or destruction of (a) any confidential or sensitive information provided by Zachry or any Indemnified Party, or accessed during the course of the Seller's performance under this Agreement, (b) any computer programs, software, firmware, application programs, operating systems, scripts, programming code, applets, executables, computer architecture, data, databases, and files of Zachry or any Indemnified Party, and (c) any computer or network systems of Zachry or any Indemnified Party. Such measures shall include, but not be limited to, the use of firewalls, anti-virus software, encryption, and regular software updates and patches, and safeguards against social engineering tactics, such as phishing and pretexting. Seller shall immediately notify Zachry of any actual or suspected security breaches and shall cooperate fully with Zachry in investigating and resolving any such breaches. Such notice should contain at least the following information, if then available: (i) the nature, scope, and estimated impact of the breach, (ii) the suspected date the breach began, (iii) the date and time of discovery of the breach, (iv) the suspected cause(s) and/or actor(s), (v) the estimated time to recover, (vi) proposed remedial actions, (vii) contact details for a representative of the party that experienced and/or discovered the breach who can keep other affected individuals and entities regularly informed of updates and can respond to requests for information regarding the breach, and (ix) other reasonable information relevant to the breach. Seller shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all Claims arising out of or in connection with Seller's breach or alleged breach of this Article 19.

ARTICLE 20. MISCELLANEOUS PROVISIONS



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20.1 **NOTICE PROVISION.** Any Notice, demand, offer, or other communication required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be deemed to have been duly given if delivered personally, sent by overnight courier, sent by certified or registered mail, return receipt requested, or sent by email to the address for the other Party set forth below or to such other address as may be designated by such Party in writing from time to time:

If delivered to Zachry:

Zachry Industrial, Inc.
 527 Logwood Avenue
 P.O. Box 240130
 San Antonio, Texas 78224-0130
 Email: foutsl@zachrygroup.com
 Attn: Lyle Fouts

with a copy to:

Zachry Industrial, Inc.
 527 Logwood Avenue
 P.O. Box 240130
 San Antonio, Texas 78224-0130
 Email: legal@zachrygroup.com
coxd@zachrygroup.com
 Facsimile: 210-588-6528
 Attn: Legal Department
 Attn: Dewayne Cox

If delivered to Seller:

Commonwealth Electric Company of the Midwest
 3910 South Street,
 Lincoln, NE 68506
 Email: tdeats@commonwealthelectric.com
 Attn: Troy Deats, Branch Manager

Any such notice, demand or other communication sent by overnight courier or certified or registered mail shall be deemed to have been received on the second business day following the date on which it was sent, and any such notice sent by email shall be deemed to have been received on the same day, if sent during normal business hours of the recipient, or on the next business day, if sent after normal business hours of the recipient. Either Party may change its address for notices by giving notice of such change in accordance with this Article.

20.2 **INDEPENDENT CONTRACTOR.** Seller and its Subcontractors shall be independent contractors with respect to the Work, and neither Seller nor its Subcontractors, nor any Person employed by any of them shall be deemed to be Zachry's or Owner's employees, servants, representatives, or agents in any respect. Nothing in this Agreement shall be construed as creating a joint venture or partnership between Zachry and Seller. Any provisions in this Agreement which may appear to give Zachry the right to direct Seller as to details of doing the Work or to exercise a measure of control over the Work shall be deemed to refer to the results of the Work only.

20.3 **ASSIGNMENT.** Seller may neither assign this Agreement, in whole or in part, without Zachry's prior written consent. Any such assignment without Zachry's written consent shall be null, void and of no force and effect whatsoever. Zachry reserves the right to assign this Agreement to Owner or to an Affiliate of Zachry at any time at the sole discretion of Zachry upon Notice to Seller. Zachry also may require that Seller provide directly to Owner the warranties and remedies hereunder; provided however, the foregoing shall not change Zachry's or Seller's rights and obligations under this Agreement, other than providing to Owner the right to directly enforce against Seller such warranties and remedies. A Change of Control shall be deemed an assignment by operation of law for the purposes of this Article 20.3. Seller shall provide Notice to Zachry no less than sixty (60) days prior to a Change of Control affecting Seller. Zachry, in its sole discretion, shall have the right to terminate this Agreement pursuant to Article 16.2 within 120 days of receipt of such Notice.

20.4 **GOVERNING LAW.** This Agreement, including the interpretation and enforcement hereof, and the resolution of all disputes arising out of or resulting from this Agreement shall be governed by, interpreted, and construed in accordance with, the Laws of the State of Nebraska, without regard to its conflict of law principles. Notwithstanding the foregoing, all lien rights, waivers, and releases shall be governed by the Law of the state in which the Site is located.

20.5 **SEVERABILITY.** If any provision, or any part thereof, of this Agreement is found by any court or governmental authority of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the remainder of such provision or any other provision hereof which shall remain in full force



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and effect.

20.6 NO WAIVER OF PERFORMANCE. The failure of either Party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver of such term, covenant or right as to further performance. Any waiver by either Party of any breach of this Agreement shall be in writing signed by the waiving Party; provided, however, no such waiver shall be construed as a waiver of any continuing or succeeding breach of such provisions, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement, unless the instrument constituting the waiver so states.

20.7 TITLES OF PROVISIONS AND GENERAL RULES OF INTERPRETATION. The titles given to the articles, sections or subsections of this Agreement are for ease of reference only and shall not be used in the interpretation of this Agreement, or relied upon or cited for any other purpose. Unless the context otherwise requires, defined terms and other words importing the singular shall include the plural and defined terms and other words importing one gender shall include the other gender. Unless the context otherwise requires, the words "include" or "including" shall mean "including, without limitation" or "including, but not limited to."

20.8 AUDITING RIGHTS. Seller shall keep accurate and complete accounting records in support of all Change Order Requests, requests for payment under Article 16, and any requests for payment that deviate from agreed milestone payments or the Schedule of Values, Attachment H. Seller's records shall be kept in accordance with generally recognized accounting principles and practices consistently applied. Zachry and its audit representatives shall have the right at any reasonable time to examine, audit, and reproduce the records, vouchers, and their source documents which serve as the basis for any Claim or for compensation, other than compensation which is fixed in amount by this Agreement. Such documents shall be available for examination, audit, and reproduction by Zachry and its representatives for four (4) years after final Project completion or earlier termination of this Agreement.

20.9 AMENDMENTS. No amendment, modification, limitation or supplement of or to this Agreement shall bind either Party unless it is in writing and signed by an officer or authorized agent of Seller and Zachry.

20.10 EQUAL EMPLOYMENT OPPORTUNITY. During performance of this Agreement, Seller shall remain in compliance with all applicable federal and state equal employment opportunity Laws and executive orders. A Certificate of Compliance is attached as Attachment K. Seller shall require an equivalent certification of compliance in all of its agreements with Subcontractors.

20.11 SURVIVAL. Articles 4 (Indemnity), 5 (Insurance), 7 (Affiliate) 9.7 (Environmental Compliance) 12 (Warranty), 13 (Passage of Title and Risk of Loss) 15 (Confidentiality), 16 (Termination; Suspension), 17 (Dispute Resolution), 19 (Cyber Security), and 20.4 (Governing Law) shall survive termination or expiration of this Agreement, in addition to any other provisions providing for indemnification of either Party or which by their nature, or by their express terms do survive or extend beyond the termination or expiration of this Agreement.

20.12 COMPLIANCE. Seller represents and covenants that it shall not, and shall not permit any of its subsidiaries and Affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, subcontractors, Sellers, representatives, or agents to, promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, any third party, including any Non-U.S. Official (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (FCPA)) in violation of the FCPA or any other applicable anti-bribery or anti-corruption law. Seller shall, and shall cause each of its subsidiaries and Affiliates to, cease all of its or their respective activities, as well as remediate any actions taken by the Seller, its subsidiaries or Affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, subcontractors, Sellers, representatives, or agents in violation of the FCPA or any other applicable anti-bribery or anti-corruption law. Seller shall, and shall cause each of its subsidiaries and Affiliates to, maintain systems or internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA or any other applicable anti-bribery or anti-corruption law. Seller shall, and shall cause any direct or indirect subsidiary or entity controlled by it, whether now in existence or formed in the future, to comply with the FCPA and any and all other applicable anti-bribery and anti-corruption laws.

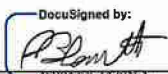
The Parties have caused this Agreement to be executed and delivered by their duly authorized officers or agents on the dates below, to be effective as of the Effective Date.

EXHIBIT B




ZACHRY INDUSTRIAL, INC.
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 Oracle Tracking #605028
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ZACHRY INDUSTRIAL, INC.

By: 
 (Signature)
 Printed Name: Richard Blanchette
 Title: Senior Vice President
 Date: 11/14/2023

**COMMONWEALTH ELECTRIC COMPANY OF THE
 MIDWEST**

By: 
 (Signature)
 Printed Name: Neil Davidson
 Title: EVP
 Date: 11-10-23



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EXHIBIT A

SCOPE OF WORK

In accordance with Article 1, the Scope of Work applicable under this Agreement is as defined in Exhibit A 'Scope of Work' attached hereto and incorporated herein. Exhibit A and its references set forth a detailed description of the Work, the Specifications for the Work and the Schedule for the performance of the Work.

1.0 DESCRIPTION OF THE WORK

- 1.1 The Work of this package shall include, but shall not be limited to, all labor, fringe benefits, safety personnel, quality assurance personnel, planning, tools, supplies, testing, permits, hoisting, handling, protection, management, supervision, coordination, and compliance with all agencies, taxes, insurance, overhead, profit and all other miscellaneous items, services and facilities necessary for the performance of the Work as shown, detailed, and/or implied by the documents set forth herein all in accordance with the Agreement Documents:
- 1.2 Detailed Scope
 - 1.2.1 Seller shall perform the Work in accordance with the Drawings, Specifications and other documents listed in Exhibit A2 - Reference Drawings and Specifications, and this Exhibit A - Scope of Work, relevant industrial codes, all Federal, state, and local governmental agencies and regulations requirements, and all other Agreement Documents. The current revision of these documents in effect on the Effective Date of the Agreement shall be used, except as otherwise noted in the Agreement Documents. In general, the Work includes, but is not limited to, the following items.
 - 1.2.2 Work details, Drawings, Specifications, schedule, and general information provided are correct and accurate to the best ability of the Zachry as of the Effective Date of the Agreement. Zachry reserves the right to clarify and/or add to the proposed Agreement details as additional engineering, constructability schedules/sequences, or any other information becomes available.
 - 1.2.3 Seller is responsible for any taxes, licenses, government approvals and/or permits that may be required for the execution of the Work.
 - 3.2.4 Exhibit A2 - Reference Drawings and Specifications includes the pertinent general and technical information related to the Work; Seller shall furnish qualified, experienced, and competent personnel and management knowledgeable and trained to perform electrical installation and other required electrical services as needed on a Time and Material basis per Zachry design and/or as directed by Zachry management.
 - 1.2.3.1 Zachry to provide all Materials.
 - 1.2.3.2 Zachry to provide major construction equipment support with a 48 hr. advance notice.
 - 1.2.3.3 In general, Seller shall be responsible for, including but not limited to installation, and testing unless expressly indicated as being performed or provided by Zachry or others.
 - 1.2.3.4 Subcontractor must follow Zachry ITP's.
 - 1.2.3.5 Terminology: All references to "vendor" and "Supplier" shall mean "Seller"; references to "materials" shall mean "Materials"; and references to "supplied" or "supply" shall mean "furnished and installed by Seller"; references to "delivery" shall mean "Delivery".
 - 1.2.4 Seller shall comply with all applicable and relevant legislation, standards, manufacturer recommendations, codes, regulations, and requirements related with but not limited to constructability, safety, quality, environmental protection, and others as may be required throughout the execution of the Work.
 - 1.2.5 Seller shall carefully evaluate any areas of uncertainty or conflicts pertaining to the Work and shall seek clarification in writing from Zachry for immediate resolution. Failure to properly notify Zachry of any such conflicts shall not release Seller of responsibilities to complete the Work or make Seller eligible for relief.

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- 1.2.6 Seller shall protect all construction equipment and Materials from damage during the performance of the Work. Repair or replacement of damaged items will be the responsibility of the Seller at no cost to Zachry.
- 1.2.7 Seller is solely responsible for all costs related and associated with the delivery of its construction equipment and Delivery of Materials required to complete the Work.
- 1.2.8 Seller shall furnish qualified, experienced, and competent supervisors and personnel that are knowledgeable and trained to perform their specific tasks in accordance with all applicable standards and procedures provided for this Work.
- 1.2.9 Permits and clearances required in connection with the Work, including but not limited to any traffic control measures, street permits, barricades, re-routing of traffic, and/or flagmen complying with all laws and regulations, including procuring any and all required services and permits shall be the responsibility of Seller.
 - 1.2.9.1 Seller shall comply with the permit to work procedures set by Zachry and/or Owner and liaise with Zachry to ensure that all procedures are effectual and relevant records maintained.
 - 1.2.9.2 Federal, state, or local permits required for the Seller to execute the Work shall be the responsibility of the Seller. Copies of the certified permits and final inspections of the Work must be submitted to Zachry within five (5) days of completion of the Work.
- 1.2.10 Seller shall provide effectual means to prevent spillage of fuels, oils, chemicals, etc. and provisions shall be made to contain any spillage occurrence. Seller's construction equipment in operation within the areas where water is being removed, shall be placed in secondary containment, monitored, and maintained daily to ensure there are no spills or leakage of fluids. Seller is responsible for the proper remediation and restoration of the affected area following a spillage.
- 1.2.11 Seller to provide adequate spill containment under all equipment parked on-Site overnight.
- 1.2.12 Seller shall inform Zachry of any water that will need to be removed from the Work area in such a manner as will not endanger public health, property, any portion of the Zachry's work under construction or completed either by Zachry or any others. Once informed, Zachry will dispose of water that needs to be removed from the work area.
- 1.2.13 Seller may be required to carry out the Work while Zachry and other subcontractor and/or Owner may be performing work at the Site and/or in the vicinity of the Work. The Seller is deemed to have made sufficient allowance in its price and schedule for working contemporaneously at the Site and other necessary worksites in association with the Work as determined by Zachry. All Work by Seller shall be performed in such a manner as will cause no disruption whatsoever to the Zachry, Owner, or other subcontractors on Site. Zachry and other subcontractor and/or Owner shall be held to this same standard mentioned above as to not disrupt Seller performing work whatsoever.
- 1.2.14 All of Sellers damaged or malfunctioning construction equipment and Materials shall be repaired or replaced expeditiously by Seller if Seller is solely responsible for damages. Resultant schedule impacts shall be mitigated by Seller if Seller is solely responsible for damages. Replaced construction equipment and Materials shall be of the same specifications as original construction equipment and Materials provided for the Work. Delays resulting from inoperable or damaged equipment and/or Material shall not qualify for additional schedule relief and mitigation of said delays shall be the responsibility of the Seller if Seller is solely responsible for damages. If Zachry and other subcontractor and/or Owner are solely responsible for damages and/or malfunctioning construction equipment and materials shall be repaired or replaced expeditiously by Zachry and other subcontractor and/or Owner. Resultant schedule impacts shall be accounted for in the form of a change order to extend the timeline of the project.
- 1.2.15 Seller shall provide construction equipment and Materials to safely execute the Work as defined herein without exceeding the manufacturer's rated capacity or operating capacity. Seller's construction equipment and Materials shall be made available for Zachry's and Owner's inspection upon arrival to Site. Only construction equipment that has been approved by Zachry shall be allowed to perform the



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Work. The inspection of all Seller construction equipment and Materials by qualified personnel prior to installation and operation shall be the responsibility of Seller.

- 1.3 Seller shall ensure compliance and make readily available to Zachry all certificates as required per the Agreement Documents and make readily available all such construction equipment as required for execution of the Work.
- 1.4 Seller shall coordinate all Work with Zachry, including Site construction management personnel and work in harmony with and provide a minimum of interference to other Zachry's employed on the Project. Zachry and other subcontractor and/or Owner shall be held to this same standard mentioned above.
- 1.5 Seller shall provide all management, safety and safety management, quality and quality management, technical expertise, supervision, certified operators, labor, site establishment, consumables, and operational support, to include certified and properly maintained construction equipment to acceptably complete the entirety of the Work. Such personnel shall be qualified, experienced, competent, knowledgeable, educated, and trained to perform operations in accordance with all applicable standards and procedures provided for this Work.
- 1.6 Seller-submitted execution plan(s) and any methods of work shall comply with all regulations and requirements listed in Agreement Documents.
- 1.7 Seller shall make all efforts to keep its worksites dry, tidy, clean of debris and clear of all unnecessary personnel and construction equipment.
- 1.8 Seller shall provide project management services to the support and development of the overall Project execution plan off-site. The requirements of these services shall commence upon the issuance of Agreement and shall continue until completion of all activities defined in the Agreement. Some of these services will be required at Site.
- 1.9 Seller shall ensure that, as a minimum, its General Foreman and safety representative are on Site during performance of the Work, including work performed by its Subcontractors.
- 1.10 Zachry estimates peak craft will be 120 people plus supporting staff. Seller will work with Zachry to define overall craft staffing levels.

2.0 RESERVED

3.0 SITE ACCESS AND SELLER PERSONNEL

- 3.1 Ingress and egress to the Site and Seller's working area shall be designated by Zachry. On-site parking for Seller's personnel will be provided by Zachry unless otherwise specified by authorized Zachry representative.
- 3.2 Seller's vehicles must be parked in the areas designated by Zachry. All vehicles shall have a parking permit. Only Company vehicles, with company logos on both sides, shall be permitted beyond the Site parking lot.
- 3.3 Seller's vehicles may be subject to search procedures by Zachry or Owner.
- 3.4 Access to the Site shall be via temporary access provided by Zachry. Seller's Subcontractors and 3rd Party representatives will be restricted and be strictly monitored. Seller shall be responsible for ensuring full integration with Zachry to ensure that a valid roll call of all of Seller's representatives present at the Site is available.
- 3.5 All Seller's representatives visiting or working at the Site will be required to attend a Zachry-provided 15-minute orientation prior to being admitted to the Site. This must be pre-scheduled with Subcontract Manager.
- 3.6 Seller's personnel will not be admitted to Site without proof of identity, negative drug screen (taken no more than 3 days prior to mobilization), proof of current employment with Seller, and a Zachry-issued Project-issued Identification Badge (if applicable). The Project-issued Identification Badge will be issued to the Seller representative after completion of the Site onboarding process. A valid identification badge will be used at the designated Site contractor personnel entrance card reader. Personnel will be required to swipe-in before shift and swipe out after shift at the contractor personnel gate.
- 3.7 All Seller's representatives shall badge-in and badge-out when on Site or sign-in and sign-out as required by Subcontract Manager.



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- 3.8 Seller must ensure that all of Seller's personnel are fully aware of, and comply with, all Site restrictions, safety rules, permit system, and the emergency evacuation procedures.
- 3.9 Seller's personnel may be subject to search procedures by Zachry.
- 3.10 Seller shall produce to Zachry, upon request, documentation to prove that all employees including those of Seller's Subcontractors have a legal right to work on the Site.
- 3.11 Zachry shall be responsible for the overall security and control of access of personnel and equipment to the Site. Seller shall provide suitable arrangements and maintain suitable records so that all personnel on the Site may be identified at any time. All Seller's personnel will be required to enter the entry points designated by Zachry. However, Seller shall be responsible for the security of, and control of, access of personnel and Materials in respect of those parts of the Site designated to Seller.
- 3.12 Seller shall always take all necessary precautionary measures and conduct all operations under the Agreement in a manner which will minimize the risk of loss, theft or damage by vandalism, sabotage, weather events or otherwise to any aspect of the Work.
- 3.13 Seller shall be responsible for the demobilization of all personnel, excess Materials and supplies, debris, construction equipment and temporary facilities from the Site at completion of the Work. The Work site area shall be made good prior to Seller's occupation unless otherwise indicated in the Agreement. Seller shall provide Zachry with a comprehensive demobilization plan no later than thirty (30) days prior to the removal of temporary facilities and construction equipment from the Site.
- 3.14 Seller and/or their subcontractor shall assemble all required construction equipment, prepare any required cans, cribbing, etc., and disassemble (as necessary) and remove from Seller's on-Site locations of the Work once that portion of the Work is complete to enable Zachry full and unimpeded access to the completed Work, and to relocate to the next Work location.
- 3.15 Deliveries shall only be allowed to Site on Monday through Friday, from 8am to 4pm.

4.0 PERSONNEL CERTIFICATION AND OPERATOR LICENSES

- 4.1 Seller shall provide certifications and licenses for all personnel assigned to the Work.
 - 4.1.1 Test records and licenses listed in resume documents shall be submitted to the Zachry Site HSSE Department for each representative associated with Work.
 - 4.1.2 Certifications shall be provided by Seller per OSHA requirements for defining minimum acceptable levels of compliance as well as Nebraska requirements.
 - 4.1.3 Seller shall obtain all license and certifications needed prior to Work commencing.
 - 4.1.4 Seller shall maintain any licenses required for State and/or local requirements for the entire performance of the Work.
 - 4.1.5 Seller shall provide the required documentation electronically and in hard copy format.

5.0 SCHEDULE

- 5.1 Zachry is required to submit to Seller a Schedule for review, together with full resource histograms setting out the sequence, dates, and manner by which Seller proposes to perform its obligations under the Agreement per Exhibit A3 - Milestone and Deliverables Schedule.
- 5.2 The Schedule will be used by Zachry to monitor the execution of the Work within each activity and the overall Work. The Schedule will be revised and updated by Seller on a weekly basis to maintain compatibility with any changes to the Work ordered in accordance with the Agreement.
- 5.3 Seller shall adhere to the following schedule dates in the performance of the Work. Table 02, below, indicates dates Zachry has currently scheduled for the Work.

Table 02 – Milestone Dates

Item	Item Description	Milestone Dates
SBLS-01	SBLS - Mobilize on Site	November 13, 2023

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Item	Item Description	Milestone Dates
SBLS-02	SBLS - De-mobilize from Site	March 01, 2024

6.0 SITE WORKING HOURS

- 6.1 Zachry's normal working hours are between the hours of 7:00 AM and 5:30 PM (Central Time Zone) Monday to Friday and are subject to change due to seasonal daylight, Standard or Daylight Savings time. Zachry reserves the right to adjust the working hours as may be required.
- 6.2 Sellers normal working hours shall be eight hours worked between the hours of 7 a.m. and 4:30 p.m., with one-half hour for a lunch period. Arrangements may be worked out between the Seller and Zachry to adjust the work hours by up to one (1) hour in order to meet the adjusted normal working hours proposed by Zachry. Forty hours within five days - Monday through Friday, inclusive, shall constitute the workweek. Monday through Sunday shall constitute the pay week.
- 6.2.1 All overtime will be at one and one-half (1-1/2) times the regular straight-time rate of pay, except that all work performed on Sunday and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day shall be paid for at double time the straight rate of pay. When one of the above referenced holidays falls on Sunday, it shall be celebrated on the following Monday.
- 6.2.2 High time shall be paid for working above 50 feet when a person can fall to the ground, and outside of a permanent structure or one under construction. Catwalks, permanent structures, inside buildings under construction and walkways with handrails, etc., is not considered high time. High time shall be paid at one and one-half the straight time hourly rate.
- 6.2.3 If Seller reports to the job site and is not able to work due to weather conditions, lack of materials, or other causes beyond Sellers control, they shall receive a minimum of two (2) hours' pay unless notified one hour before the starting time of the job which will be charged to Zachry.
- 6.3 Seller shall not be allowed to perform the Work outside of these working hours unless previously approved of by Zachry.
- 6.4 Any additional costs incurred by Seller in the event of being allowed to perform the Work outside of the standard working hours identified above shall be at the sole expense of Seller.

7.0 SITE SAFETY REQUIREMENTS

- 7.1 In addition to the safety requirements and specific documents in the Agreement and those referenced herein this Exhibit A – Scope of Work, Seller shall comply with the documents included in Exhibit A2 – Reference Documents and Specifications.
- 7.2 All of Seller's personnel working on the Site shall wear appropriate Personal Protective Equipment (PPE) as defined in the Agreement Documents.

Minimum PPE required:

- 7.2.1 **Hard Hat**, brim forward (ANSI Z89.1-1989 and/or ANSI Z89.2-1971)
- 7.2.2 **Safety Glasses** (ANSI Z87.1); *Spoggles shall be worn at times determined by Site Management*
- 7.2.3 Activity-Appropriate **Gloves (at all times)**
- 7.2.4 **Long-Sleeved Shirt** (in good condition)
- 7.2.5 **Long Pants** (in good condition)
- 7.2.6 **Steel-Toed or Composite-Toed leather boots**, covering the ankles, defined heels, in good condition (ANSI Z41)
- 7.2.7 **Reflective Vest** or clothing (ANSI/Class 2 High Visibility)
- 7.2.8 **Ear Plugs** (if in an area with noise greater than 85dB)
- 7.2.9 Seller shall follow the Site Covid-19 protocol

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- 7.3 Suitable PPE must be worn for any tasks where risk assessment has identified the need to protect personnel from other specific hazards which cannot be eliminated (e.g., silica).
- 7.4 Seller shall be responsible for providing all PPE for its personnel and its Subcontractors' personnel, ensuring that it is used correctly and by providing appropriate training for its proper use.
- 7.5 Delivery drivers must comply with all PPE requirements if exiting their vehicle.
- 7.6 **Tobacco and Vaping are prohibited on all OPPD sites.**
- 7.7 Seller shall have the correct onboarding documents for entry onto the Site-Specific Safety Orientation, and all PPE associated with the process. Any Seller personnel or representative who does not possess the required documentation and/or PPE shall be denied entrance. No additional cost or schedule relief shall be granted to Seller for the deficiency thereof.
- 7.8 When working on areas outside the Site in connection with this Agreement, Seller shall comply with its Health and Safety Policy and applicable Legislation.
- 7.9 Safety and Health Representative.
 - 7.9.1 Seller shall provide a Safety and Health Representative or designee, approved by Zachry. This representative shall attend all Site Safety and Health Meetings and participate in all safety and reporting activities when Seller has personnel or Subcontract personnel on Site.
 - 7.9.2 Seller shall provide a dedicated Safety and Health professional when Seller's combined personnel and Subcontractor personnel headcount exceeds twenty-five (25) charged hourly to Zachry per the rates identified in Attachment H. Zachry reserves the right (at Zachry's expense) to require a dedicated Safety and Health professional at any headcount.
- 7.10 Seller to implement a Dropped Object Prevention Program and to furnish proper training to its personnel and to apply appropriate tool restraint/lanyards/tethers properly on tools when working in elevated areas. Also, tool buckets must be capable of being closed and secured. Areas with the potential to be impacted by drop hazards must be secured with RED barricades and appropriate signage provided and designated by Zachry, and (if necessary) a dedicated watch person provided by Seller.
- 7.11 Seller's personnel have "Stop Work Authority", and can intervene to stop Work of Zachry, subcontractors, and their own personnel when they observe an unsafe action or operation. Contact Zachry Safety and Subcontract Manager immediately upon stopping the Work.
- 7.12 All Seller's and its Subcontractors' personnel register for and successfully complete a three (3) hour on-line safety orientation prior to arriving on site.
- 7.13 All Seller's and its Subcontractors' personnel shall attend a 30-minute site safety orientation prior to starting work. Orientation day and time must be scheduled with Subcontract Manager prior to arrival.
- 7.14 Seller to submit its Site-Specific Safety Plan for Zachry's review and approval. Approval must be granted by Zachry and Owner prior to Seller mobilizing at the Site.
- 7.15 Drug and Alcohol Program Requirements: Reference "Site Specific Safety and Health Plan, OPPD Project" listed in Exhibit A2 - Reference Documents & Specifications hereof.
- 7.16 Seller shall provide properly trained and certified personnel (as required) and to obtain Zachry permits for confined space, hole watch, lock-out/tag-out, trenching, work with silica (respiratory exam and face-mask fitting), scaffolding, hot work, etc.
- 7.17 All of Seller's and its Subcontractors' personnel at the Site shall attend a Monthly Mass Safety Meeting, lasting approximately one (1) hour.
- 7.18 Seller's construction equipment, whether owned or rented, shall have its own spill kit, fire extinguisher (with proof of monthly and annual inspections), working and audible back-up alarm, no cracked/broken windshields, and an operator's manual. Daily safety inspections must be performed pre-shift and inspection documents available for inspection by Zachry.

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- 7.19 When operating mobile equipment and vehicles on-Site, headlights must be on, and all personnel must wear seatbelts. No riders are allowed unless proper seating and seat belts are provided.
- 7.20 Seller shall designate at least one (1) different worker each week to participate in Zachry's Site safety inspections.
- 7.21 Seller shall complete a daily Mission Planning Worksheet (MPW), Job Safety Analysis (JSA), or equivalent. Seller shall revise as necessary, should the work scope change during the course of the day. Temporary fences, guardrails, barricades, lights, and other protective measures required for the safety of all personnel and the premises shall be installed and maintained in good condition. Any damage by the Seller to temporary/permanent structures, utility lines, or graded areas caused directly during the course of the Work shall be repaired to the original condition without cost to Zachry / Owner or additional schedule relief to Seller.
- 7.22 Seller shall provide Zachry with documentation that Seller's and its Subcontractors' personnel have had appropriate and adequate training in fall protection. Seller's and its Subcontractors' personnel shall demonstrate their fall protection competence to Zachry Safety Facilitators by navigating Zachry's Fall Protection Simulator before initially utilizing fall protection equipment.
- 7.23 Seller shall submit for approval, furnish, and install its intended engineered fall protection system when applicable.
- 7.24 All personnel are prohibited from exiting a manlift basket when in use. Climbing on the manlift basket's rails and carrying materials in the basket is prohibited.

8.0 COORDINATION

- 8.1 Seller shall coordinate with Zachry to minimize interference, obstruction, and interruptions to the Zachry, the Project and other subcontractors on Site to achieve the smoothest possible workflow among all entities.
- 8.2 Seller shall be responsible for its own proper housekeeping, Hazardous and Non-Hazardous Waste control, and disposal of work debris for its own work areas.
- 8.3 Seller shall escort its suppliers, vendors, and visitors entering and exiting through Site designated ingress and egress points that have not been through Site orientation.
- 8.4 Seller shall attend a weekly coordination / review meeting at the Site. Seller shall be prepared to report on progress of the Work; schedule issues; engineering issues; quality issues and commercial issues at this meeting. Seller may also be requested to attend periodic coordination meetings with Zachry's Site Management and other subcontractors.
- 8.5 The person or persons designated by Seller to attend the required meetings shall have all the required authority to make decisions and commit Seller to solutions agreed upon during any meetings.
- 8.6 Throughout the execution of the Work, Seller shall maintain an interface with Zachry's Project execution teams. Communications to include but not be limited to a Weekly 30-day, 90-day and 6-week look ahead meeting with Seller as required.
- 8.7 Seller shall only provide for its own transport, unload, haul, receive, store, maintain, protect from damage, erect, clean, adjust, and perform all other services or work required to bring Materials, supplies and construction equipment to a state of readiness for operations.
- 8.8 Seller shall coordinate Material and construction equipment deliveries and laydown/storage with Zachry. Laydown area(s) will be identified by Zachry prior to Seller's mobilization.

9.0 COMMUNICATIONS

- 9.1 Seller has incorporated all Project communication activities and requirements within the Agreement Price, Schedule and resource allocations.
- 9.2 Seller shall submit to the Zachry Site Subcontract Manager a headcount of all its personnel and its Subcontractors' personnel within the first two (3) hours of each workday. Total workhours to be reported by noon the following workday on a Daily Report of activities/progress for that day.



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- 9.3 Meeting Communication activities will occur in accordance with the frequencies detailed in the Meeting Matrix (presented in 11.4 below) to ensure the Work adheres to performance and schedule constraints.
- 9.4 Seller is required to attend meetings as identified in the below Meeting Matrix. The purpose of these meetings is to facilitate Project communications to execute the Work in the most efficient and effective manner.

Meeting Matrix

Meeting Type	Objective	Frequency
Kickoff Meeting	Introductions, Review scope, technical requirements, deliverable submission schedule, Quality, Safety	Once
Engineering Meeting	Communicate engineering status and discuss technical and commercial concerns.	TBD
Pre-Mobilization Meeting	Preparedness to Mobilize	Once
Project Team Meetings	Coordination and Progress	Weekly

10.0 TESTING AND MONITORING

- 10.1 Seller shall cooperate with Zachry's and Owner's Field Representative to perform all testing in a timely manner, and as required by the Project specifications and Agreement Documents.
- 10.2 Testing of the Seller's Work shall not commence until a detailed and specific procedure for the execution and witnessing of such test has been submitted by the Seller and approved to by Zachry. Seller shall provide notice of such tests per the specifications and/or Agreement Documents.
- 10.3 Seller will be required to repeat, at its own expense, any tests that have not been witnessed by Zachry's designated representative.
- 10.4 Seller shall make available all test records and shall issue relevant required documentation as areas of Work are completed including all required calibration certificates, if applicable, and all required materials testing certificates.

11.0 LAYDOWN

Seller to provide a Layout Plan of its proposed Storage Facilities with the Seller's proposal to include electrical load and tie-in requirements.

12.0 QUALITY ASSURANCE AND QUALITY CONTROL

- 12.1 Seller shall comply with all quality assurance and quality control requirements of the Agreement and specifications.
- 12.2 Seller shall submit resumes, for review and approval, for all personnel responsible for Quality associated with the Work prior to commencing the Work.
- 12.3 Seller shall submit a Quality Manual and/or Quality Plan, Inspection and Test Plans, Inspection and Test Records, and other Quality-related documents as required for the respective scope of work per the terms of the Agreement, for review and approval by Zachry prior to commencing Work.

13.0 DOCUMENTATION AND SUBMITTAL REQUIREMENTS OF SELLER

- 13.1 Seller shall provide a detailed and comprehensive Execution Plan that incorporates the key elements for a successful project including Methods Statement, Safety Execution Plan, Quality/ITP Plan, Staffing Plan, Materials Delivery Plan and Equipment List Plan per the deliverables schedule as shown on Agreement Exhibit A3 – Milestone and Deliverables Schedule. Execution Plan shall include, but not be limited to the following:
- 13.1.1 Schedule showing the sequence in which Seller proposes to perform the Work.
- 13.1.2 Total Manhours planned to perform the Work.
- 13.1.3 Plan for removal/replacement of utilities, powerlines, signs, traffic signals etc., if applicable.



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- 13.1.4 Proposed mobilization dates for personnel, temporary facilities, Materials, and construction equipment.
- 13.1.5 An outline of all Seller manpower, construction equipment, and Materials required to complete the Work.
- 13.1.6 Crew leadership qualifications.
- 13.1.7 Site-Specific Safety Plan (separate submittal referenced from Execution Plan).
- 13.1.8 Equipment Operator Training Certificates.
- 13.1.9 Power requirements and equipment.
- 13.1.10 Material product data and source.
- 13.1.11 Safety Data Sheets (separate submittal referenced from Execution Plan).
- 13.1.12 Fueling and Equipment Maintenance.
- 13.1.13 Laydown space required.
- 13.2 Seller shall not commence any part of the Work without prior written approval of related Execution Plan by Zachry. Any Work commenced and / or completed without Zachry's approval may result in a Work stand down at Seller's expense.
- 13.3 Seller shall submit for approval within thirty (30) Days of the Effective Date of the Agreement / Notice to Proceed, a mobilization plan illustrating its lay-down area for temporary facilities, storage within the area allocated by Zachry and for construction equipment and Materials to be used to execute and complete the Work. The information to be provided shall include a schedule for mobilization of construction equipment and a manpower histogram.
- 13.4 In accordance with Seller Document Requirements included in Exhibit A1- Seller-Prepared Drawings and Data and Exhibit A3 - Milestone and Deliverables Schedule, it is understood that the Seller-submitted deliverables be reviewed and approved by Zachry prior to Seller's mobilization at the Site and shop fabrication activities.
- 13.5 Seller shall maintain and submit to Zachry daily work sheets and summary weekly progress reports, the form of which is mutually agreed that will enable Zachry to effectively assess the Seller's performance/progress of the Work, including expended workhours.
- 13.6 Seller shall prepare and submit a comprehensive turn-over package to include, at a minimum, approved submittal data, test results, map locating tests and repairs performed, QC inspections, warranty documents, lien releases, final letter of compliance to the agreement requirements and any other documentation required by Zachry, their affiliates, customer, suppliers, governmental agencies, and participating financing institutions.

14.0 REPRESENTATIVES

- 14.1 From the commencement of the Work at the Site or any other worksite until completion of the Work, Seller's representative must appoint a suitable person to act as the site/project manager, who must supervise all work done at the Site or any worksite by the Seller and must be generally present throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Work, and whenever the site/project manager is absent from the Site a suitable person must be appointed to act as his/her deputy.
- 14.2 The other key personnel who shall be from the Seller's management team and who will be engaged in the management of the execution of the Work are listed in Table 03 below, as approved by Zachry. The Seller shall use its best effort to retain these staff on site and may only change individuals after the written consent of the Zachry has been obtained, or where Zachry directs that Seller to make such change. Only individuals with appropriate experience or qualifications will be accepted by Zachry.

Table 03: Seller's Key Personnel



ZACHRY INDUSTRIAL, INC.
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Name	Position	Email Address	Phone No.
Jared Gable	Foreman	jgable@commonwealththelectric.com	
Justin Wyles	General Foreman	jwyles@commonwealththelectric.com	

15.0 CONSTRUCTION FACILITIES

Table 04 below, list the items in support of the Work that will be the responsibility of each Party:

Table 04: OPPD Construction Facilities Checklist

Construction Facilities, Utilities, and Services	Provided by		Details
	Seller	Zachry	
Field Office			
Field office structure	x		
Field office furniture	x		
Field office equipment	x		
Field office supplies	x		
Craft change facilities	x		If required
Fabrication shops	x		If required
Parking Area		x	Need approx. number of vehicles
Tools			
Erection tools	x		
Special erection tools	x		
Purchaser-supplied equipment special erection tools			N/A
Test equipment for erection, testing, startup and operation	x		
Equipment			
Construction equipment	x		Zachry crane support only must be scheduled 48 hours in advance.
Subcontractor construction elevator			N/A
Project construction elevator			N/A
Communication			
Construction Site Internet Connection	x		
Telephone			
Construction telephone service trunk line			N/A
Construction telephone trunk line connection to Seller field office			N/A
Seller's telephone equipment and system wiring			N/A
Compressed Air			
Construction compressed air source		x	
Construction compressed air distribution			N/A
Electrical Power			
Construction power source		x	In power island area if available
Construction power Seller's distribution system		x	



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Construction Facilities, Utilities, and Services		Provided by		Details
Item	Seller	Zachry		
Construction power Seller's distribution system maintenance		x		
Construction power Seller's energy usage payment		x	Only applicable if Zachry provides	
Lighting				
General areas temporary lighting and maintenance		x		
Seller specific work area temporary lighting and maintenance	x			
General area site lighting and maintenance		x	General areas by Zachry	
Seller areas site temporary lighting and maintenance	x		Seller areas by Seller	
Water - potable and non-potable				
Construction water source		x	In specific locations non-potable	
Construction water primary distribution system			N/A	
Construction water Seller's distribution and maintenance system		x		
Construction water Seller's usage payment		x	Only applicable if Zachry provides	
Drinking water supply and distribution	x			
Heat				
Temporary heating facilities/system		x	Labor by Seller only	
Heating energy usage payment		x	Only applicable if Zachry provides	
Sanitary Facilities				
Construction primary sanitary facilities and maintenance		x		
Access Roads				
Primary access roads to Site		x		
Seller specific access roads and maintenance to work area.		x	excludes Seller's work area	
Storage Facilities				
Onsite laydown space		x		
Seller storage area maintenance	x			
Construction warehousing	x			
Existing warehouse usage			N/A	
Tool storage facilities	x			
Climate controlled storage facilities	x			
Construction equipment fueling facilities	x			
Security				
Overall site security		x		
Seller specific areas security	x		Seller responsible for securing its areas	
Medical Facilities				
Onsite first aid/medical services	x			
Drug sampling/testing facilities	x			
Fire Protection				



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Construction Facilities, Utilities, and Services		Provided by		Details
Item	Seller	Zachry		
Construction fire protection - fire extinguishers	x			
Cleanup				
General trash collection and disposal		x		
Subcontractor specific trash collection and disposal	x		Disposal in dumpsters	
Project joint cleanup crew program			Clean its work area	
Field office janitorial service	x			
Concrete source				
Onsite concrete batch plant			N/A	
Concrete usage payment			N/A	
Concrete test facilities and testing			N/A	
Scaffolding				
Scaffolding supply/erection/dismantle		x	By others	
Welding				
Welder testing		x		
Welder test facilities		x		
Welding/cutting consumables		x		
Survey Datum Points				
Basic horizontal and vertical control points		x		
Detail layout control points		x	By others	
General Work-related survey layout		x	By others	
Misc. Services & Materials				
Bolting materials between any equipment or materials installed	x		Labor by Seller only	
Solvents and cleaning materials	x			
Supply and placement of grout and grouting materials		x		
Touchup paint	x		Labor by Seller only	
Supply lubricants for installed equipment	x			
Application of lubricants for installed equipment	x			
Maintenance of traffic		x	Overall traffic control by Zachry	
Dewatering System				
Dewatering work and coordination		x	By others	



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EXHIBIT A1

SELLER PREPARED DRAWINGS AND DATA

Submittal procedures for Seller prepared drawings, documents, instruction manuals and general data requirements are provided in Section 013300 Submittals.

Seller shall submit descriptive information in accordance with the instructions contained within Section 013300 to allow the Engineer to ensure the Materials and equipment proposed for the Project are in conformance with the design concepts and in conformance with the Drawings and Specifications.

Note: All Submittals shall be in English and in Standard Units of Measure

Deliver to:

PDF transmitted electronically to Zachry's ACONEX System
Alternate if electronic copy not available
Original and one copy to:

Zachry Engineering Corporation
1121 North 102nd Court
Omaha, Nebraska 68114
Attn: Ron VanCleve
Phone: (402) 548-4856
Email: vanclever@zachrygroup.com

One copy to:

Zachry Industrial, Inc.
OPPD Standing Bear Lake Station
11401 Military Road
Omaha, Nebraska 68164
Attn: Steve Slocum
Phone: (210) 382-3502
Email: slocums@zachrygroup.com

EXHIBIT B



ZACHRY INDUSTRIAL, INC.
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EXHIBIT A2**REFERENCE DOCUMENTS & SPECIFICATIONS**

Specifications for this Particular Scope

DOCUMENT TITLE	DOCUMENT NUMBER / FILE NAME	REV
Site Specific Safety and Health Plan, OPPD Project	N/A	2
Project Information and Site Data	ZE114485-SPC-GNSP-000101	1
Submittal Procedures	ZE114485-SPC-GNSP-013300	1
Quality Requirements	ZE114485-SPC-GNSP-014000	1
Product Requirements	ZE114485-SPC-GNSP-016000	1
Coatings	ZE114485-SPC-GNSP-099001	3
General Provisions - Electrical	ZE114485-SPC-GNSP-260000	1
Site General Arrangement	ZE114485-SRW-LAL1-0002-01	4

EXHIBIT B



ZACHRY INDUSTRIAL, INC.
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ATTACHMENT A

ACORD®		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)																																																								
<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>																																																												
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EXHIBIT B



ZACHRY INDUSTRIAL, INC.
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ATTACHMENT B

ADDITIONAL INSURED ENDORSEMENT FORMS

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
 CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional Insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional Insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



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 ZII Job #115001

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
 CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



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ATTACHMENT C

ZACHRY'S SUPPLEMENTAL SAFETY REQUIREMENTS

- A. Seller warrants and represents to Zachry that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its forces for the purpose of enforcing compliance with these safety requirements in connection with Seller's Work. Seller acknowledges and agrees that Zachry does not undertake any duty toward Seller's employees to train, manage, supervise, monitor, and inspect Seller's Work activities for the purpose of enforcing compliance with these safety requirements.
- B. Seller shall be familiar with and shall abide by the safety rules and regulations of Zachry, Owner, and any governmental authority with jurisdiction to control the manner or method of carrying out the Work, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto. Seller further agrees to require all of its employees, subcontractors and Sellers to comply with these requirements.
- C. Seller shall be responsible without limitation for complying with the provisions of the 2012, OSHA amended 1926.59/1910.1200 Hazardous Communication Standard which aligns with the Globally Harmonized System for the Classification and Labeling of Chemicals (GHS), and/or other Laws relating to hazard communications or "right-to-know." Seller shall ensure that Zachry is furnished with a copy of all current Safety Data Sheets (previously referred to as Material Safety Data Sheets, MSDS) which is required by the Hazardous Communication Standards for all Hazardous Substances, which Seller will introduce to any Work location where Zachry's employees may be present. To the extent that Safety Data Sheets must be posted in Work locations where Seller uses, or stores Hazardous Substances on any Site subject to this Agreement, Seller shall see that such Safety Data Sheets are prepared and posted as required by Laws. Seller hereby warrants that any chemical or substance used or stored on any Site subject to this Agreement that is unaccompanied by a Safety Data Sheet as required by OSHA is not hazardous.
- D. Seller shall observe and comply with all Laws with respect to environmental protection applicable to the Site and to Seller's Work, including those Laws relating to the use of water, the release, discharge or disposal of wastes, the control of drainage, and the protection of vegetation, wildlife, habitats, or surroundings. Seller shall also observe and comply with any environmental commitments made by Owner and Zachry in securing any permit or authorization for the Site.
- E. Without limiting the foregoing, Seller specifically shall require all its Subcontractors, employees, visitors, Sellers, and agents under its direction to:
 1. ensure the use of required and approved appropriate personal protective equipment including but not limited to hardhats, safety glasses with side shields, proper clothing, work shoes, fall protection devices, respiratory protection and other equipment that may be necessary.
 2. ensure that platforms and scaffolding conform to OSHA specifications and have decking, toe boards, mid-and top-rail, cross bracing, level pads and/or wheels and appropriate ladders for platform access. The construction and maintenance shall be supervised by a designated competent person. They shall be designed by a registered engineer when appropriate.
 3. provide for and ensure the use of continuous fall protection equipment when activities take place above 6'0" with a potential fall exposure or such lower elevations as may be established for the Site.
 4. provide competent persons designated in accordance with OSHA CFR29 Part 1910 and 1926 for all applications that require that designation.
- F. Without limiting the foregoing, Seller and its Subcontractors shall:
 1. provide for and ensure the use of safety equipment in its Work in accordance with Zachry's and/or Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.

EXHIBIT B



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2. conduct a weekly safety meeting with its employees and list the topics discussed with signatures of attendees. The list shall be made available to Zachry upon request. Seller and its Subcontractors shall attend Zachry's safety meetings but attendance at these weekly safety meetings is not intended to and shall not relieve Seller of its duty to provide safety training to its employees in accordance with safety requirements of generally recognized industry standards, and any Laws.
 3. provide Zachry's on-site management with an "Emergency List" showing Seller's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided. Seller shall furnish its employees first aid or send first aid injuries to Seller's designated doctor.
 4. within eight (8) hours from the time of accident (or such shorter period as Laws may require), advise Zachry of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Seller shall promptly furnish Zachry with a written report of any such accident as well as a copy of all Insurance and Workers' Compensation Claims involving this Project.
 5. maintain clean Work areas and secure and protect all Work materials in accordance with safety requirements of generally recognized industry standards.
 6. if it becomes necessary to have access to any openings or shafts or to remove handrails, Seller shall ensure that the openings or shafts are protected in accordance with generally accepted practices and any applicable federal, state or local standards while the Work is in progress, and that any covers or handrails removed by the Seller are replaced before leaving the area.
 7. dig and maintain all excavations in a manner consistent with OSHA guidelines under the supervision of a competent person.
 8. maintain and inspect all construction equipment, including cranes and other lifting equipment prior to each use. Seller warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training (e.g., forklift training, scaffold training) is the responsibility of the Seller.
 9. implement Lock Out/Tag Out procedures that are consistent with Zachry and/or Owner's procedures.
 10. coordinate Work adjacent to stored energy devices (e.g., overhead power lines or underground utilities) with the appropriate authorities.
- G. Seller agrees and acknowledges that the failure to perform or comply with any of the requirements set out in this Attachment shall constitute a default of Seller's obligations under this Agreement.



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ATTACHMENT D

ZACHRY'S DRUG AND ALCOHOL PROGRAM REQUIREMENTS

1. Seller agrees that it is subject to the following provisions:

A. Seller agrees that as a condition of entry on to the Zachry worksite, Seller's employees and agents may be required to consent to a drug and/or alcohol screen test to verify compliance with the Drug and Alcohol Policy of Zachry and/or the Owner of the Site. Seller warrants and agrees that Seller's employees have been informed of and have agreed to comply with this requirement as a condition of their entry on to the Site.

B. Seller warrants and represents that it has read and understood the drug and alcohol policy requirements of Zachry and of the Owner and that the provisions of such policies also apply to Seller, its employees and Subcontractors.

C. Seller warrants and agrees that it shall have a Drug and Alcohol Program to test to the same level as ZACHRY and to implement the drug and alcohol policy requirements of Zachry and of the Owner to include pre-employment/pre-access, random, reasonable, suspicion/selective and post-accident drug and/or alcohol screen test being required of all Subcontractor's employees on a Zachry or Owner Site.

D. Specifically, Seller warrants and agrees that it has advised its employees that:

- 1) the use, possession, sale, manufacture, distribution or dispensation of prohibited drugs and/or unauthorized alcoholic beverages on the project Site by any employee, Seller employee, or agent is prohibited by Zachry policy.
- 2) entry on to a Zachry worksite by a Seller employee constitutes agreement to abide by the terms of the Drug and Alcohol Policy of Zachry and/or Owner.
- 3) entry on to a Zachry worksite constitutes consent to a vehicle and/or personal property search when entering, leaving, or at the Site.
- 4) Seller's employees and agents, as a condition of entry on to the Zachry worksite, may be required to consent to a drug and/or alcohol screen test.
- 5) anyone found in violation of this Policy or who refuses to consent to a search, or drug or alcohol screen test, or who is found in violation of the Drug and Alcohol Policy requirements of Zachry and/or Owner will be asked to leave and will be barred from the Site at the discretion of Zachry.

2. Seller further warrants that it will in all respects comply with the requirements of the Drug Free Workplace Act of 1988 P.L. 41 USC 701, et. seq.

Accordingly, Seller warrants that it has required its employees to notify the Seller of any conviction for a workplace violation of a criminal drug statute no later than five (5) days following such conviction, and Seller agrees to notify the appropriate federal granting agency within ten (10) days after receiving such notice with a copy of such notice to Zachry.

Seller shall conduct a background check for each employee providing Work to Zachry to identify whether the employee has been convicted of a felony. Seller agrees that no employee convicted of a felony will be permitted to provide Work in connection with this Agreement without Zachry's written consent.

3. Seller acknowledges and agrees that Zachry and Owner have a valid property right and interest in the Project, the preservation of safety on the Site, and the protection of both the Work and the Site from and against Persons entering the same in violation of the Drug and Alcohol Policy requirements of Zachry and/or Owner. Accordingly, to the maximum extent permitted by Law, Seller agrees to defend and hold Zachry and Owner harmless from and against any loss, expense or cost (including, but not limited to, attorneys' fees and costs of defense) arising out of or in any way related to any demand, Claim, or cause of action asserted against them, or either of them, by reason of Zachry's enforcement of the Drug and Alcohol Policy.



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ATTACHMENT E-1**SELLER'S CHANGE ORDER REQUEST****Date:** [REDACTED]**CHANGE ORDER INFORMATION:**Change Order Request No.: [REDACTED]

Seller: (Insert Representative Name)
 (Insert Address of Cognizant Office)
 (Insert City, State and Zip Code)

Zachry: (Insert Representative Name)
 (Insert Address of Cognizant Office)
 (Insert City, State and Zip Code)

CHANGE TO THE WORK: *Seller shall provide a detailed analysis of the proposed changes. List or attach all supporting documents, including drawings, specifications, or other Project Documents, that are part of or may be modified by this request.*

CHANGE TO THE SCHEDULE: *Seller shall explain any impacts to the Schedule for the Work.*

CHANGE TO THE AGREEMENT PRICE: *Seller shall provide a breakdown of cost associated with this change, along with supporting documents. Attach a copy of the Seller's proposal, if applicable.*

Amount of this Change Order Request (☐ Increase or ☐ Decrease) \$ [REDACTED]

The Seller shall submit this Change Order Request in accordance with the Notices provision of the Agreement.

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST:

Name: _____

Signature: _____

Title: _____

Phone No.: _____

Email: _____

This is not a change order. The terms and conditions, specifications and requirements of the original Agreement remain unchanged unless authorized in accordance with Article 11, Changes and Delays, and defined and executed under Attachment E-2 of this Agreement.

EXHIBIT B



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**ATTACHMENT E-2
 CHANGE ORDER FORM**

Change Order Date:
 Project: OPPD Standing Bear Lake Generation Station
 C.O.#:
 Seller:

Pursuant to the provisions of the Agreement dated [REDACTED], Seller is hereby directed to proceed with the Work covered by this Change Order. The Agreement Price will be **(increased/reduced)** by the sum of [REDACTED] Dollars (\$[REDACTED]). The performance of this Change Order is to be in strict accordance with the terms and conditions of the Agreement except as may be identified herein. The Agreement Schedule will be **(increased/decreased)** by [REDACTED] days.

SCOPE OF CHANGE ORDER:

(Insert here the exact scope of change or attach Exhibit A)

CONDITIONS OF CHANGE: Except as may be otherwise provided in the Scope of this Change Order, the undersigned agrees to furnish all labor, equipment and materials and perform all Work required to complete the above described Work change in accordance with the requirements of the Agreement for the stated consideration. All additional Work is to be completed in accordance with the Project Schedule with no additional time adjustment or extension of the completion date, except as otherwise provided in this Change Order. The lump sum amount and any all applicable taxes, are payable in accordance with the Agreement.

Previous Change Orders	Dollar Value	Change Order Number	Date
	\$		
	\$		
	\$		
Total Amount Payable under this Change Order*	\$		
Total Amount of Previous Change Orders*	\$		
Base Agreement Price*	\$		
Revised Agreement Price*	\$		

The Parties have caused this Change Order to be executed and delivered by their duly authorized officers or agents effective as of the date of execution below.

ZACHRY INDUSTRIAL, INC.

**COMMONWEALTH ELECTRIC COMPANY OF THE
 MIDWEST**

By: _____
 (Signature)

By: _____
 (Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B



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ATTACHMENT F

PARTIAL WAIVER AND RELEASE OF LIENS, AFFIDAVIT OF BILLS PAID AND INDEMNIFICATION

WHEREAS, the undersigned ("Seller") has entered into a written agreement with Zachry Industrial, Inc., ("Zachry"), dated November 11, 2023, Agreement No. 115001-605028 ("Agreement") in connection with the construction of improvements at Omaha, County of Douglas, State of Nebraska ("Site") for the OPPD Standing Bear Lake Generation Facility ("Project") owned by Omaha Public Power District ("Owner"), and;

WHEREAS, Seller has performed labor at and/or furnished materials, or both, pursuant said Agreement and is requesting payment of in the amount of (\$ _____) as partial payment for all labor performed and/or materials furnished for the period ending on _____ on account of such labor performed and/or materials furnished;

NOW, THEREFORE, in order to induce Owner to make payment to Zachry and Zachry to make payment to Seller of the above specified sum, the sufficiency of which is hereby acknowledged and agreed and contingent upon receipt of such consideration, Seller agrees as follows:

1. Seller hereby waives, relinquishes and releases any and all liens, rights of lien, Claims, rights or charges of any nature whatsoever, that may have arisen or may arise in the future by virtue of all labor performed and/or materials supplied by the Seller or its Subcontractors on the Project up to and including this date: _____, including any and all mechanic's or materialmen's liens or Claims for payment, which it may have or claim against Zachry, the Owner, the Site or the Project and any and all structures, buildings and other improvements located thereon arising under any law, including the law of the State where the Site is situated.
2. Seller also certifies and warrants that it has paid all of its Subcontractors for their labor performed at and/or materials supplied to the Project through the date specified in paragraph 1 herein.
3. SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ZACHRY, THEIR AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL LOSS, COST AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, WITNESS FEES (INCLUDING EXPERTS AND CONSULTANTS), OR OTHER DISPUTE RESOLUTION COSTS, ON ACCOUNT OF LIENS, CLAIMS OF LIEN, ENCUMBRANCE, DEBT, CLAIMS OR OBLIGATIONS OF ANY KIND ASSERTED BY ANY PERSON WHATSOEVER IN CONNECTION WITH SELLER FOR ANY LABOR PERFORMED OR MATERIALS TO THE EXTENT ZACHRY IS CLAIMED TO BE RESPONSIBLE FOR ANY SUCH CLAIM PRIOR TO AND INCLUDING THE DATE SPECIFIED IN PARAGRAPH 1.

All capitalized terms used in this instrument and not otherwise defined herein shall have the definition ascribed to such terms in the Agreement.

EXECUTED THIS _____ day of _____, 20_____.

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST

By: _____
Signature of Officer, Partner or Owner
NAME: _____
TITLE: _____

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the individual who signed the foregoing Partial Waiver and Release of Liens, Affidavit of Bills Paid and Indemnification, being personally known to me, and acknowledge that he or she executed the foregoing instrument for the uses, purposes, and consideration therein expressed, and that the execution of the instrument was the free and voluntary act and deed of the Seller named and further certified, and that if Seller is a Corporation, it appeared by the officer who signed on its behalf, and such officer to me acknowledged that the execution was based on authority duly granted.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for The State of _____
My Commission Expires: _____

EXHIBIT B



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ATTACHMENT G

FINAL WAIVER AND RELEASE OF LIENS, AFFIDAVIT OF BILLS PAID AND INDEMNIFICATION

This Final Waiver and Release of Liens, Affidavit of Bills Paid and Indemnification (Waiver, Affidavit and Indemnification) is made in accordance with the provisions of that certain Agreement No. 115001-605028 entered into by and between the undersigned ("Seller") and Zachry Industrial, Inc. ("Zachry"), dated November 11, 2023 including any and all modifications and amendments thereto ("Agreement") in connection with the construction of improvements at Omaha, County of Douglas, State of Nebraska, ("Site") for the OPPD Standing Bear Lake Generation Facility ("Project") owned by Omaha Public Power District ("Owner").

In consideration of payments made heretofore, or to be made, by Owner to Zachry and Zachry to Seller, the sufficiency of which is hereby acknowledged and agreed, for labor, materials and services furnished by Seller in performance of the Agreement and contingent upon receipt of such consideration, Seller hereby unconditionally agrees to the following:

1) Seller hereby waives, relinquishes and releases any and all liens, rights of lien, Claims, rights or charges of any nature whatsoever, that may have arisen or may arise in the future by virtue of all labor, materials and services performed and supplied by Seller or its Subcontractors on the Project in connection with the Agreement, including any and all mechanic's or materialmen's liens, which it may have or claim against Zachry, the Owner, the Site or the Project and any and all structures, buildings, and other improvements located thereon arising under any Law of the state where the Site is situated.

2) Seller certifies and warrants that all payments for labor, materials and services performed and supplied to the Project have been made to:

- (A) All of its Subcontractors of every tier including: _____; and
 (B) For all labor, materials and services performed, used and supplied in, to and in connection with Sellers Work on the Project.

3) SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ZACHRY, THEIR AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL LOSS, COST AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, WITNESS FEES (INCLUDING EXPERTS AND CONSULTANTS), OR OTHER DISPUTE RESOLUTION COSTS, ON ACCOUNT OF LIENS, CLAIMS OF LIEN, ENCUMBRANCE, DEBT, CLAIMS OR OBLIGATIONS OF ANY KIND ASSERTED BY ANY PERSON WHATSOEVER IN CONNECTION WITH SELLER FOR ANY LABOR PERFORMED OR MATERIALS SUPPLIED BY OR THROUGH SELLER TO THE PROJECT OR IN ANY OTHER WAY ARISING OUT OF THE PROJECT.

All capitalized terms used in this instrument and not otherwise defined herein shall have the definition ascribed to such terms in the Agreement.

EXECUTED THIS _____ day of _____, 20____.

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST

By: _____

Signature of Officer, Partner or Owner

NAME: _____

TITLE: _____

STATE OF _____ §
 COUNTY OF _____ §

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the individual who signed the foregoing Final Waiver and Release of Liens, Affidavit of Bills Paid and Indemnification, being personally known to me, and acknowledge that he or she executed the foregoing instrument for the uses, purposes, and consideration therein expressed, and that the execution of the instrument was the free and voluntary act and deed of the Seller named and further certified, and that if Seller is a Corporation, it appeared by the officer who signed on its behalf, and such officer to me acknowledged that the execution was based on authority duly granted.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for The State of: _____

My Commission Expires: _____

EXHIBIT B



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ATTACHMENT H
SCHEDULE OF VALUES

Seller shall be compensated for Work in accordance with the following rates which are fully burdened to include but not limited to: wages, overhead, general and administrative expenses, taxes and profit.

	Billing Rates: Includes all fringes, burdens, overheads, small tools, etc.	Unit of Measure	Straight Time Rate	Overtime Rate*
1	Project Manager	Hour	\$145.00	\$217.50
2	Superintendent	Hour	\$105.00	\$157.50
3	Project Controls/Scheduler	Hour	\$145.00	\$217.50
4	Safety/Quality Manager	Hour	\$94.00	\$141.00
5	Safety Facilitator/Technician	Hour	\$85.00	\$127.50
6	Quality Inspector	Hour	\$84.40	\$126.60
7	General Foreman	Hour	\$95.30	\$125.66
8	Foreman	Hour	\$84.40	\$116.84
9	Journeyman Electrician (Licensed)	Hour	\$78.51	\$108.00
10	Journeyman Electrician	Hour	\$78.51	\$108.00
11	Instrument Technician	Hour	\$84.40	\$116.84
12	Helper/Apprentice	Hour	\$56.72	\$76.22
13	Laborer	Hour	\$56.72	\$76.22
14	Union Steward	Hour	\$84.40	\$116.84
15	Per Diem	Day	Included in Rates	
16	Safety Requirements (Required PPE)	Percent per Hour	2%	
17	Small Tools (under \$5,000 value)	Percent per Hour	2%	
18	Indirect Support (not listed above)	Percent per Hour	1%	
19	Permanent Material Purchases	Cost Plus Percent	10%	
20	3 rd Party Equipment Rental	Cost Plus Percent	5%	
21	Mobilization / Demobilization	Each	\$101,550.00	

Overtime shall be applicable for hours worked in excess of eight (8) hours per day and Saturdays



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ATTACHMENTS I & J
(RESERVED)



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ATTACHMENT K
CERTIFICATE OF COMPLIANCE

To the extent the following clauses are applicable under Laws, they are hereby incorporated by reference into this Agreement, and Seller represents and certifies that it is and shall remain during the performance of this Agreement in compliance with the following:

EQUAL OPPORTUNITY CLAUSE (41 CFR 60-1.4; 48 CFR 52.222-26; prescribed in 22.810(e))

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (48 CFR 52.222-27; prescribed in 22.810(f))

CONSTRUCTION CONTRACTOR'S AFFIRMATIVE ACTION REQUIREMENTS—NEW TITLE AS OF 07/01/07(EXECUTIVE ORDER 11246) (41 CFR 60-4.3)

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246) (48 CFR 52.222-23; prescribed in 22.810(b))

PROHIBITION OF SEGREGATED FACILITIES (48 CFR 52.222-21; prescribed in 22.810(a) (1)) –NEW TITLE AS OF 10/01/07

AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA—NEW TITLE AS OF 07/01/07 (41 CFR 60-250.4)

UTILIZATION OF SMALL BUSINESS CONCERNS (48 CFR 52.219-8; prescribed in 19.708(a))—NEW TITLE AS OF 10/01/07

SMALL BUSINESS SUBCONTRACTING PLAN (48 CFR 52.219-9; prescribed in 19.708(b))—NEW TITLE AS OF 10/01/07

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (48 CFR 52.222-36; prescribed in 22.1408 (a)) –NEW TITLE AS OF 10/01/07

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (41 CFR 60-741.5)



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ATTACHMENTS L & M
(RESERVED)



6633 N. 120th Street
Omaha, NE 68164





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ATTACHMENT O
(RESERVED)



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ATTACHMENT R

ENVIRONMENTAL RULES FOR SELLERS

1. Seller and its Subcontractors must review Site orientation documents and sign affidavit, if required, by the Zachry site manager.
2. Seller and its Subcontractors must inform the Zachry site manager (or designee) *in writing* of the type and amount of any Hazardous Substances or chemicals (prior to their delivery to the Site) to be brought on-Site to complete the Work including fuels and oils to be used. Seller and its Subcontractors shall further notify the Zachry site manager in writing during the course of construction, if any additional Hazardous Substances or chemicals are to be brought on Site.
3. Seller and its Subcontractors must provide Safety Data Sheets (previously referred to as Material Safety Data Sheets, MSDS) for all chemicals as directed by the Zachry site manager prior to Hazardous Substances or chemicals being brought on-site. Per the OSHA Hazard Communications standard, SDSs must be maintained (by all Sellers and Subcontractors) on-site for any Hazardous Substances or chemicals that could pose a health or physical threat to personnel, and all personnel must be Hazard Communication trained. The Zachry site manager is responsible for ensuring that required Hazard Communication training is provided to Zachry employees potentially exposed to these Hazardous Substances or chemicals.
4. No Hazardous Substances or regulated materials may be brought onto the Site unless necessary for contracted Work.
5. Waste management, including determination of the type of waste, quantity, and appropriate storage prior to off-site disposal, must be coordinated with the Zachry site manager.
 - (a) Seller and its Subcontractors must provide Zachry site manager with waste minimization plans. [Plans often include product substitution, process changes to eliminate or reduce chemical use, and/or recycling or reusing materials;]
 - (b) Copies of any analyses performed to classify wastes as hazardous or non-hazardous must be given to Zachry site manager and copied to the Omaha Public Power District Compliance Officer and Zachry environmental manager;
 - (c) Hazardous Substances used and hazardous waste generated must be stored in appropriately sized secondary containment in areas agreed to by Zachry site manager;
 - (d) Secondary containment structures shall be maintained free from storm water or other materials that defeat the purpose of the secondary containment. Storm water or other materials removed from secondary containment structures must be managed and disposed of appropriately.
 - (e) All Hazardous Waste must be disposed of in appropriate DOT specified containers for the material contained.
 - (f) All original manifests, shipping papers, certificates of disposal, or other documents associated with Hazardous Substances and/or Hazardous Waste transport and disposal must be provided to Zachry site manager. Hazardous Substances manifests must be signed by the Zachry contractor or subcontractor whose EPA ID number is used for Hazardous Substance disposal;
 - (g) Seller and its Subcontractors must inform the Zachry site manager of all disposal sites to be used for Hazardous and Non-Hazardous Substances prior to mobilization at the Site;
 - (h) Seller and its Subcontractors' employees responsible for managing Hazardous Substances must be properly trained. Documentation of that training is to be provided to the Zachry site environmental specialist and Zachry Site safety manager.
 - (i) Hazardous Substance releases or spills, including petroleum product spills of any kind, must be reported immediately to the Zachry site manager;
6. Seller and its Subcontractors must coordinate with the Zachry site manager for proper storage of flammable or other types of chemicals.
7. Seller and its Subcontractors are responsible for knowing and complying with all local, state and federal reporting and response requirements for releases or spills of oil, petroleum products or Hazardous Substances. Seller and its Subcontractors must ensure that spill prevention measures are in place during the course of Work at the Project Site. These measures include:
 - (a) ensuring that all containers are closed at the end of each Work day;
 - (b) use of temporary hoses is carefully planned;
 - (c) secondary containment is used for Work near drains;



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- (d) all fuel and oil tanks used by Seller and its Subcontractors must be placed in secondary containment on an impervious surface;
 - (e) Seller and its Subcontractors must maintain appropriate spill clean-up equipment near tanks.
 - (f) following Work and prior to start up, Seller and its Subcontractors must ensure that all valves, man ways, and pipelines are closed if appropriate to minimize risk of spills;
 - (g) Seller and its Subcontractors must assume that all "out-of-service" lines will leak when brought back into service – appropriate spill containment measures must be taken;
 - (h) Seller and its Subcontractors must document the training of personnel in spill awareness, notification, and identification of spill risk areas; and
 - (i) Seller and its Subcontractors must review the Site's spill plans and know the appropriate Zachry Site contact in the case of any spill. Seller and its Subcontractors must coordinate with the Zachry site manager in order to understand the plant's spill response plans.
8. Sellers and its Subcontractors must comply with all applicable local, state, and federal laws in the course of performing Work at the Project Site. Seller and its Subcontractors must coordinate with the Zachry site manager to ensure that the terms of permits to conduct Work are met. Copies of any and all permits acquired by Seller and its Subcontractors shall be provided to the Zachry site manager. All Sellers and Subcontractors must coordinate any contact with regulatory agencies with the Zachry site manager.
 9. Seller and its Subcontractors must include environmental issues in daily safety tailgate sessions. Zachry site environmental manager and Zachry site safety manager should attend meetings when possible.
 10. If Work is conducted on Risk Management Plan (RMP) or Process Safety Management (PSM) regulated system, all requirements in the RMP and PSM documents must be reviewed and coordinated with the designated Zachry contact and addressed during the course of Work.
 11. Seller and its Subcontractors are required to maintain "good housekeeping" during the course of the Project and must perform a thorough Site clean-up following completion of the Work. All unused chemicals are the property of the Seller or its Subcontractors and must be removed from the Site at the end of the job unless specific arrangements are made. Seller and its Subcontractors must inform the Zachry site manager when Hazardous Substances have been removed from the Site.
 12. Seller and its Subcontractors must conduct a post-project Site "walk-down" with the Zachry site manager and site environmental manager to ensure that environmental issues are corrected.
 13. All required erosion control/storm-water pollution prevention practices must be implemented and documented as required by regulations, Storm-water Pollution Prevention Plans (SWPPP) or Best Management Practices (BMP). A listing of these requirements shall be coordinated with Zachry site manager.



ZACHRY INDUSTRIAL, INC.
Agreement #115001-605028
Oracle Tracking #605028
OPPD Standing Bear Lake Generation Facility
ZII Job #115001

ATTACHMENT E-2
CHANGE ORDER

Date: April 4, 2024
Project: OPPD Standing Bear Lake Generation Facility
C.O. #: 001
Seller: Commonwealth Electric Company of the Midwest

Pursuant to the provisions of the Agreement dated November 14, 2023. Seller is hereby directed to proceed with the Work covered by this Change Order. The Agreement Price will **increase** by the amount of **FIVE MILLION US DOLLARS AND 00/100 CENTS (\$5,000,000.00)**. The performance of this Change Order is to be in strict accordance with the terms and conditions of the Agreement except as may be identified herein. *The Agreement Schedule will remain unchanged.*

SCOPE OF CHANGE ORDER:

This Change Order is hereby issued to increase the Agreement Price to provide additional electrical support, and extend the demobilization milestone date to on or before 6/30/2024.

All other terms and conditions of this Agreement and its modifications shall remain unchanged, unless modified herein.

CONDITIONS OF CHANGE: Except as may be otherwise provided in the Scope of this Change Order, the undersigned agrees to furnish all labor, equipment and materials and perform all Work required to complete the above-described Work change in accordance with the requirements of the Agreement for the stated consideration.


All additional Work is to be completed in accordance with the Project Schedule with no additional time adjustment or extension of the completion date, except as otherwise provided in this Change Order. The lump sum amount and all applicable taxes are payable in accordance with the Agreement.

Previous Change Orders	Dollar Value	CO #	Date
N/A	\$0.00		

Total Amount Payable under this Change Order	\$ 5,000,000.00
Total Amount of Previous Change Orders	\$ 0.00
Base Agreement Price	\$ 5,000,000.00
Revised Agreement Price	\$ 10,000,000.00

The Parties have caused this Change Order to be executed and delivered by their duly authorized officers or agents effective as of the date of execution below.

ZACHRY INDUSTRIAL, INC.

By: 
(Signature)
Brad Reece
(Printed Name)

Title: SVP Estimating, Controls & Procurement
Date: 4/11/2024

**COMMONWEALTH ELECTRIC COMPANY OF
THE MIDWEST**

By: Neil Davidson
(Signature)
Neil Davidson
(Printed Name)

Title: COO
Date: 4/9/2024



May 15, 2024

VIA EMAIL

Troy Deats
Commonwealth Electric Company of the Midwest
3910 South Street
Lincoln, NE 68506
tdeats@commonwealththelectric.com

**Re: NOTICE OF TERMINATION FOR CONVENIENCE
Service Agreement by and between Zachry Industrial, Inc. ("Zachry") and Commonwealth
Electric Company of the Midwest ("Commonwealth"), dated November 14, 2023 (Agreement
#115001-605028) (the "Agreement")
OPPD Standing Bear Generation Facility (the "Project")**

Dear Mr. Deats:

Pursuant to Article 16.2 in the Agreement, you are hereby notified that Zachry hereby terminates the Agreement for its convenience, effective May 17, 2024 (two days from today). In accordance with the Agreement's terms, please submit an invoice for all of Commonwealth's work on the Project through May 17.

Additionally, as required by Article 16.2, please provide a request for termination-related costs, if any, along with accounting records and documentation to support your calculation, within thirty (30) days of the date of this notice.

Notwithstanding the foregoing, Zachry does not waive but rather maintains all of its rights under the Agreement.

Sincerely,

A handwritten signature in black ink, appearing to be "Lyle Fouts", written over a horizontal line.

Lyle Fouts
EPC Project Manager
fouts1@zachrygroup.com



cc: Brad Reece
Zachry Industrial, Inc.
Via Email: reececb@zachrygroup.com

Larry Shofner
Zachry Industrial, Inc.
Via Email: shofnerl@zachrygroup.com

Julie Inman
Zachry Industrial, Inc.
Via Email: inmanja1@zachrygroup.com

Gil Craft
Zachry Industrial, Inc.
Via Email: craftg@zachrygroup.com

Dewayne Cox
Zachry Industrial, Inc.
Via Email: coxd@zachrygroup.com

Zachry Industrial, Inc.
Attn: Legal Department
Via Email: legal@zachrygroup.com

EXHIBIT 3

**ZACHRY INDUSTRIAL, INC.****Agreement #115001-605028**

Oracle Tracking #605028

OPPD Standing Bear Lake Generation Facility

ZII Job #115001

ATTACHMENT E-2**CHANGE ORDER**

Date: April 4, 2024

Project: OPPD Standing Bear Lake Generation Facility

C.O. #: 001

Seller: Commonwealth Electric Company of the Midwest

Pursuant to the provisions of the Agreement dated November 14, 2023. Seller is hereby directed to proceed with the Work covered by this Change Order. The Agreement Price will **increase** by the amount of **FIVE MILLION US DOLLARS AND 00/100 CENTS (\$5,000,000.00)**. The performance of this Change Order is to be in strict accordance with the terms and conditions of the Agreement except as may be identified herein. *The Agreement Schedule will remain unchanged.*

SCOPE OF CHANGE ORDER:

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CONDITIONS OF CHANGE: Except as may be otherwise provided in the Scope of this Change Order, the undersigned agrees to furnish all labor, equipment and materials and perform all Work required to complete the above-described Work change in accordance with the requirements of the Agreement for the stated consideration.


All additional Work is to be completed in accordance with the Project Schedule with no additional time adjustment or extension of the completion date, except as otherwise provided in this Change Order. The lump sum amount and all applicable taxes are payable in accordance with the Agreement.

Previous Change Orders	Dollar Value	CO #	Date
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Total Amount Payable under this Change Order	\$ 5,000,000.00
Total Amount of Previous Change Orders	\$ 0.00
Base Agreement Price	\$ 5,000,000.00
Revised Agreement Price	\$ 10,000,000.00

The Parties have caused this Change Order to be executed and delivered by their duly authorized officers or agents effective as of the date of execution below.

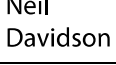
ZACHRY INDUSTRIAL, INC.

By: 
(Signature)
Brad Reece
(Printed Name)

Title: SVP Estimating, Controls & Procurement

Date: 4/11/2024

**COMMONWEALTH ELECTRIC COMPANY OF
THE MIDWEST**

By: 
(Signature)
Neil Davidson
(Printed Name)

Title: COO

Date: 4/9/2024

EXHIBIT 4



May 15, 2024

VIA EMAIL

Troy Deats
Commonwealth Electric Company of the Midwest
3910 South Street
Lincoln, NE 68506
tdeats@commonwealthelectric.com

**Re: NOTICE OF TERMINATION FOR CONVENIENCE
Service Agreement by and between Zachry Industrial, Inc. ("Zachry") and Commonwealth
Electric Company of the Midwest ("Commonwealth"), dated November 14, 2023 (Agreement
#115001-605028) (the "Agreement")
OPPD Standing Bear Generation Facility (the "Project")**

Dear Mr. Deats:

Pursuant to Article 16.2 in the Agreement, you are hereby notified that Zachry hereby terminates the Agreement for its convenience, effective May 17, 2024 (two days from today). In accordance with the Agreement's terms, please submit an invoice for all of Commonwealth's work on the Project through May 17.

Additionally, as required by Article 16.2, please provide a request for termination-related costs, if any, along with accounting records and documentation to support your calculation, within thirty (30) days of the date of this notice.

Notwithstanding the foregoing, Zachry does not waive but rather maintains all of its rights under the Agreement.

Sincerely,

A handwritten signature in black ink, appearing to be "Lyle Fouts", written over a horizontal line.

Lyle Fouts
EPC Project Manager
foutsl@zachrygroup.com



cc: Brad Reece
Zachry Industrial, Inc.
Via Email: reececb@zachrygroup.com

Larry Shofner
Zachry Industrial, Inc.
Via Email: shofnerl@zachrygroup.com

Julie Inman
Zachry Industrial, Inc.
Via Email: inmanja1@zachrygroup.com

Gil Craft
Zachry Industrial, Inc.
Via Email: craftg@zachrygroup.com

Dewayne Cox
Zachry Industrial, Inc.
Via Email: coxd@zachrygroup.com

Zachry Industrial, Inc.
Attn: Legal Department
Via Email: legal@zachrygroup.com

EXHIBIT 5

Fill in this information to identify the case:

Debtor Zachry Industrial, Inc.

United States Bankruptcy Court for the: Southern District of Texas
(State)

Case number 24-90385

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Commonwealth Electric Company of the Midwest</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Contact phone <u>402-473-2203</u> Contact email <u>See summary page</u>	Contact phone _____ Contact email _____
	(see summary page for notice party information) Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6.	Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>0636</u>
7.	How much is the claim? \$ <u>5,359,030.62</u>	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8.	What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Labor, materials, services and supplies</u>	
9.	Is all or part of the claim secured? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable	
10.	Is this claim based on a lease? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____	
11.	Is this claim subject to a right of setoff? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____	



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

☐ No

☒ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ 1,038,339.54

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/27/2024

MM / DD / YYYY

/s/Billy J Friesen

Signature

Print the name of the person who is completing and signing this claim:

Name Billy J Friesen

First name

Middle name

Last name

Title CFO

Company Commonwealth Electric Company of the Midwest

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



EXHIBIT 6

**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)
)	

**DEBTORS' OBJECTION TO THE CLAIM OF
COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST (CLAIM NO. 1003)**

This is an objection to your claim. This objection asks the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.

A hearing will be conducted on this matter on April 1, 2025 at 3:00 p.m. prevailing Central Time, in Courtroom 404, 4th floor, 515 Rusk Street, 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 205691. 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.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") file this objection (the "**Objection**") to the claim of Commonwealth Electric Company of the Midwest ("**Commonwealth Electric**") set forth in proof of claim number 1003 (the "**Claim**"). In support of this Objection, the Debtors submit the *Declaration of Raymond Boldt in Support of the Debtors'*

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 www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

Objection to the Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003) (the “**Boldt Declaration**”) and the *Declaration of William B. Murphy in Support of the Debtors’ Objection to the Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003)* (the “**Murphy Declaration**”), each filed concurrently herewith. In further support of this Objection, the Debtors respectfully state as follows:

Preliminary Statement

1. On September 21, 2021, Zachry Industrial Inc. (“**ZII**” or “**Zachry**”) entered into a contract with the Omaha Public Power District to design and construct electrical generation facilities at two locations, the Standing Bear Lake Station and Turtle Creek Station. Zachry hired Commonwealth Electric as a subcontractor to assist Zachry in the construction of both projects; however, this Objection primarily concerns Commonwealth Electric’s work on Standing Bear Lake Station (the “**Project**”) under one of three different service agreements between Zachry and Commonwealth Electric (Service Agreement #115001-605028 or the “**Service Agreement**”).²

2. Under the Service Agreement, Commonwealth Electric agreed to perform electrical work on the Project. The service agreement between Zachry and Commonwealth Electric sets forth specific deliverables, deadlines, and standards of work, and provides that Zachry would be able to offset any costs due to Commonwealth Electric’s defective, incomplete, or unnecessary work against Commonwealth Electric’s billed invoices under the service agreement.

3. Commonwealth Electric’s Claim asserts an unsecured claim of \$5,359,030.62, of which \$1,038,339.54 is asserted to be entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code. The vast majority of the Claim (approximately

² The request in this Objection to reduce the Claim only relates to Commonwealth Electric’s work pursuant to the Service Agreement. However, the request in this Objection to reclassify the Claim relates to Commonwealth Electric’s work on both Standing Bear Lake and Turtle Creek.

\$5,000,000) relates to outstanding invoices for work performed under the Service Agreement. The work performed by Commonwealth Electric under the Service Agreement was defective, incomplete and in some cases duplicative. As set forth in the Declaration of Raymond Boldt, Zachry incurred \$1,775,916 in costs due to Commonwealth Electric's defective and incomplete work, and \$876,066 of the invoiced amount was for unnecessary duplicative work. Collectively, Zachry is entitled to an offset of \$2,651,982 against Commonwealth Electric's invoices. In addition, only a fraction of the asserted 503(b)(9) portion of the Claim is actually for goods delivered to the Debtors in the 20 days prior to the Petition Date (as defined below).

4. Therefore, the Court should reduce the Claim by \$2,651,982 to a corrected amount of \$2,707,048.62 and reclassify the Claim such that only \$110,275.93 is entitled to priority under section 503(b)(9) of the Bankruptcy Code.

Relief Requested

5. By this Objection, the Debtors seek entry of an order, substantially in the form attached hereto (the "**Proposed Order**") (i) reducing the Claim to a corrected amount of \$2,707,048.62, (ii) reclassifying the claim such that only \$110,275.93 is entitled to priority under section 503(b)(9) of the Bankruptcy Code, and (iii) granting such other and further relief as the Court deems just and proper.

Jurisdiction, Venue, and Predicates for Relief

6. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and this Court has constitutional authority to enter a final order because the matter involves allowance or disallowance of claims against the estate.³

³ To the extent the Court does not have constitutional authority to enter a final order in this matter, the Debtors confirm their consent to the entry of a final order by the Court.

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

8. The predicates for the relief requested herein are sections 105(a), 502(b), and 558 of title 11 of the United States Code (the “**Bankruptcy Code**”), rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

Background

I. General Background

9. On May 21, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). On June 4, 2024, the Office of the United States Trustee for the Southern District of Texas appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”) [Docket No. 176] and reconstituted the Committee on January 27, 2025 [Docket No. 2002]. No trustee or examiner has been appointed in the Chapter 11 Cases. A detailed description of the Debtors and their businesses is set forth in the *Declaration of Mohsin Y. Meghji in Support of Debtors’ Petitions and Requests for First Day Relief* [Docket No. 7].

10. On July 16, 2024, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the “**Schedules and Statements**”). *See* Docket Nos. 510–531. On August 30, 2024, December 2, 2024, and December 20, 2024 several of the Debtors filed amendments to their Schedules and Statements. *See* Docket Nos. 855–865, 1564, 1770–1775. In particular, on December 20, 2024, after commencing their claims reconciliation process,

the Debtors filed additional amendments to their Schedules and Statements as they relate to Commonwealth Electric [Docket No. 1772].

11. On July 26, 2024, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 636] (the “**Bar Date Order**”). The Bar Date Order established September 16, 2024, at 5:00 p.m. (prevailing Central Time) as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file proof of such claim. The past bar dates for filing proofs of claim related to the amended Schedules and Statements were October 4, 2024, January 2, 2025, January 21, 2025 at 5:00 p.m. (prevailing Central Time). The deadline for all governmental entities holding or wishing to assert a claim against any of the Debtors that arose prior to the Petition Date to file proof of such claim was November 18, 2024, at 5:00 p.m. (prevailing Central Time).

II. Zachry’s Prepetition Agreement with Commonwealth Electric

12. On November 14, 2023, Zachry entered into the Service Agreement under which Commonwealth Electric was to perform certain electrical work in support of the Standing Bear Lake Station electric generation facility (SBLs) that ZII was building for the Omaha Public Power Department, referenced as ZII Job number 115001. Boldt Decl. ¶ 4.

13. Commonwealth Electric’s scope of work on the Project included installation and testing of various switchgear, circuits, panels, and instrument and power cables needed on the project, including associated hardware, junctions, penetration seals, conduit, cable trays, supports, and terminations. *Id.*

III. Commonwealth Electric’s Incomplete, Defective and Duplicative Work

14. Commonwealth Electric began work pursuant to the Service Agreement shortly after it was executed and was terminated on the Project by Zachry on May 15, 2024. Boldt Decl. ¶ 4. However, since May 2024, Zachry has determined that Commonwealth Electric’s work was defective and incomplete, requiring corrective work. Boldt Decl. ¶¶ 4-6. The majority of this incomplete and/or defective work was identified in four Zachry back charge notifications (“BCN”), and includes but is not limited to the following (the “**BCN-Identified Incomplete and Defective Work**”):

- the absence of floor plates in multiple areas, resulting in the need to remove and reinstall cables in accordance with site requirements;
- various cables were found to be damaged, and there were issues with the formation of cables on the trays and panels;
- certain installations were found to be lacking Roxtec;
- multiple discrepancies in various panels upon final testing procedures;
- missing circuits and other components.

Boldt Decl. ¶ 6.

15. In order to rectify the BCN-Identified Incomplete and Defective Work, Zachry utilized its own direct labor and subcontractors under Zachry’s direction to promptly inspect, phone, re-terminate, and test affected cables, and to install necessary missing or incorrectly installed components such as floor plates, circuits, panels and Roxtec. Boldt Decl. ¶ 6.

16. In addition to the BCN-identified defective work, Zachry discovered other defective work (the “**Other Incomplete and Defective Work**”). Boldt Decl. ¶ 9. Zachry incurred additional scaffolding, labor, and materials costs in order to rectify the defects in the Other Incomplete and Defective Work. Boldt Decl. ¶¶ 9-17.

17. Furthermore, Commonwealth Electric unnecessarily installed redundant cabling (known as “cable pulling”) at the Project inconsistent with its assigned scope of work under the Service Agreement. Boldt Decl. ¶¶ 10-11. This problem was made worse by Commonwealth’s failure to adequately document its cable pulling. *Id.* As a result, Zachry not only paid for Commonwealth’s redundant cable pulling work, Zachry also incurred costs for identifying and resolving issues caused by the redundant cabling. *Id.*

18. As set forth in the below chart, and as described in the Boldt Declaration, Zachry estimates approximately \$2.65 million in incurred costs or overbilling due to Commonwealth Electric’s incomplete, defective, and/or duplicative work outside the scope of the Service Agreement:

Incurred Cost Category	Description	Cost Incurred by Zachry
Costs to rectify BCN-Identified Incomplete and Defective Work	Costs to rectify incomplete and/or defective work identified through BCNs, including (1) third party labor charges; (2) estimated Zachry technical and engineering support and field construction support costs based on historical standards developed by Zachry; and (3) third party construction material costs, including a markup on third party construction material based on Zachry’s contracts with Commonwealth Electric. Boldt Decl. ¶ 8.	\$1,009,015
Labor costs due to Other Incomplete and Defective Work	Indirect labor costs to takeover and effectuate the completion and correction of Commonwealth Electric’s work and third-party labor charges for Zachry’s subcontractor to complete smaller tasks not otherwise captured by a specific Extra Work Order. Boldt Decl. ¶ 16.	\$348,000
Material due to Other Incomplete and Defective Work	In order to rectify the Other Incomplete and Defective Work, Zachry had to purchase additional materials and supplies not reflected in the back charge notifications, including additional cable, conduit, cable terminations and cable trays. Boldt Decl. ¶ 14.	\$183,095

Incurring Cost Category	Description	Cost Incurred by Zachry
Scaffolding costs	Portions of Commonwealth’s defective work were located at elevation. Accordingly, Zachry was required to rent and erect scaffolding and then remove that scaffolding. Costs include Zachry labor costs to erect and remove the scaffolding and third party scaffolding rental charges. Boldt Decl. ¶ 12.	\$195,806
Costs and overbilling due to Duplicative Cabling	Commonwealth Electric installed duplicate cables unnecessarily and billed Zachry. Zachry not only paid for Commonwealth Electric’s redundant cable pulling work, Zachry also incurred costs for identifying and resolving issues caused by the redundant cabling. Boldt Decl. ¶ 10.	\$876,066
Paid smoke breaks	Commonwealth Electric billed Zachry for smoke breaks taken on a tobacco free jobsite. ⁴ Boldt Decl. ¶ 16a.	\$40,000
Total:		\$2,651,982

IV. Commonwealth Electric’s Proof of Claim

19. On August 27, 2024, Commonwealth Electric filed the Claim asserting a total unsecured amount of \$5,359,030.62, of which \$1,038,339.54 was asserted as being entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code. *See* Claim No. 1003. Out of the \$5,359,030.62 asserted in the Claim, approximately \$5,000,000 relates to work done on the Project pursuant to the Service Agreement.

Argument

20. Section 502(a) of the Bankruptcy Code provides, in pertinent part, that “[a] claim or interest, proof of which is filed under section 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Further, section 502(b)(1) of the

⁴ *See* Service Agreement Art. 9.3.

Bankruptcy Code provides that a court “shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—such claim is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b)(1). This statutory exception to the allowance of a claim is “generally complemented by § 558, which provides that ‘[t]he estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of fraud, usury, and other personal defenses.’” *In re W.R. Grace & Co.*, 626 B.R. 217, 235 (Bankr. D. Del. 2021) (quoting 11 U.S.C. § 558). Section 558 preserves for the benefit of the estate not only defenses the statute specifically references but also such defenses as counterclaim, setoff, and recoupment. *See, e.g., In re ABC-NACO, Inc.*, 294 B.R. 832, 836 (Bankr. N.D. Ill. 2003) (counterclaim); *In re Gaulsh*, 602 B.R. 849, 854–55 (Bankr. S.D.N.Y. 2019) (setoff); *see e.g., In re e.Spire Commc’ns, Inc.*, 293 B.R. 639, 648 (Bankr. D. Del. 2003) (recoupment).

21. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See, e.g., In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010). However, a proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *See id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *In re Armstrong*,

347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000)).

22. Here, the Court should reduce the Claim because Commonwealth Electric performed incomplete, defective, and/or unnecessary duplicative work not in accordance with the Service Agreement. The Service Agreement under which the work was performed provides that if Zachry is “required . . . to perform certain work on [Commonwealth Electric]’s behalf, whether this work be in contention or agreed . . . [l]abor will be charged to [Commonwealth Electric].” Service Agreement Art. 11.9. Furthermore, the Service Agreement states that Zachry may withhold payment where Zachry has incurred losses due to defective work not remedied by Commonwealth Electric, or where Commonwealth Electric failed to perform work in accordance with the Service Agreement. *Id.* at 10.1.3. A full description of Commonwealth Electric’s incomplete and defective work may be found in the Boldt Declaration. *See* Boldt Decl. at ¶¶ 6-17.

23. To rectify Commonwealth Electric’s defective and incomplete work, Zachry incurred significant costs. As fully described in the Boldt Declaration, the corrective work necessary because of the BCN-Identified Incomplete and Defective Work cost Zachry \$1,009,015. *See id.* at ¶ 8. The corrective work necessary to rectify the Other Incomplete and Defective Work cost Zachry \$348,000 in labor costs and \$183,095 in material costs. *See id.* at ¶¶ 14, 16. The scaffolding needed in the corrective work cost Zachry \$195,806. *See id.* at ¶ 12. Zachry has the right to withhold payments to offset such costs due to Commonwealth Electric’s defective work pursuant to articles 10.1.3 and 11.9 of the Service Agreement.

24. In addition, Zachry incurred costs due to Commonwealth Electric’s installation of unnecessary duplicative cables against the terms of the Service Agreement, in the amount of

\$876,066. *See id.* at 10. Commonwealth Electric billed Zachry for \$40,000 worth of labor costs for smoke breaks taken by its workers, despite the Service Agreement making clear that the Project was to be smoke-free. *See* Service Agreement Art. 9.3. In both cases, Commonwealth Electric failed to perform the Work in accordance with the Service Agreement. Therefore, Zachry has the right to withhold payments to offset the costs incurred due to the duplicative work and inappropriate labor bill, pursuant to articles 10.1.3 and 11.9 of the Service Agreement.

25. While the Service Agreement does not provide for recovery of damages for delay, Zachry has incurred \$2.1 million in delay costs due to Commonwealth Electric's incomplete and/or defective work. *See* Boldt. Decl ¶ 18. The Debtors are not seeking to reduce or offset Commonwealth Electric's Claim amount for this \$2.1 million. However, these delay costs demonstrate even further damage suffered by Zachry due to Commonwealth Electric's defective and/or incomplete work, and that equity also points towards the reduction of Commonwealth Electric's Claim.

26. The Claim also asserts a \$1,038,339.54 expense priority under section 503(b)(9) of the Bankruptcy Code. Section 503(b)(9) states that "the value of any goods received by the debtor within 20 days before the commencement of [a chapter 11 case] . . . sold to the debtor in the ordinary course" shall be entitled to administrative expense priority. 11 U.S.C. § 503(b)(9). However, as set forth in the Murphy Declaration, the Debtors have reviewed Commonwealth Electric's invoices related to the Claim and have determined that only \$110,275.93 was invoiced for goods delivered to the Debtors within 20 days before the Petition Date. The Claim incorrectly included invoices for non-goods, such as labor costs, demobilization costs, third-party equipment rentals, and retainage amounts as being entitled to 503(b)(9) priority. After accounting for these

amounts, the Claim should be reclassified such that only \$110,275.93 is entitled to 503(b)(9) administrative expense priority.

Reservation of Rights

27. By this Objection, the Debtors object to the Claim solely for the reasons identified therein. Regardless of whether one or more of the bases for objection stated herein is overruled, or otherwise not sustained, the Debtors reserve the right to (i) amend, modify, or supplement this Objection, (ii) file additional objections to the Claim on any basis, and (iii) pursue claims and causes of action against Commonwealth Electric or any other person or entity and seek appropriate remedies in connection with same. Further, the Debtors reserve their rights to object to any proof of claim, including but not limited to the Claim, on any grounds whatsoever at a later date, including, among other things, based on amount, priority, classification, or otherwise.

28. Nothing contained herein or any actions taken pursuant to such relief requested 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 nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a waiver of any claims or causes of action which 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' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (h) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance of property of the Debtors' estates; or (i) a

concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Objection are valid and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

Notice

29. The Debtors will provide notice of this Objection to: (a) the United States Trustee for the Southern District of Texas; (b) counsel for the Committee; (c) the Prepetition Agent; (d) the United States Attorney's Office for the Southern District of Texas; (e) the state attorneys general for the states in which the Debtors operate; (f) the Internal Revenue Service; (g) counsel to Commonwealth Electric; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice need be provided.

No Previous Request

30. No previous request for the relief sought herein has been made by the Debtors to this Court or any other court.

Conclusion

31. For the foregoing reasons, the Debtors respectfully request the Court enter the Proposed Order (i) reducing the Claim to a corrected amount of \$2,707,048.62, (ii) reclassifying the claim such that only \$110,275.93 is entitled to priority under section 503(b)(9) of the Bankruptcy Code, and (iii) granting such other and further relief as the Court deems just and proper.

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Dated: February 20, 2025
Houston, Texas

/s/ Charles R. Koster

WHITE & CASE LLP

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*Counsel to the Debtors and
Debtors in Possession*

Certificate of Service

I certify that on February 20, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

EXHIBIT 7

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)
_____)	

**DECLARATION OF RAYMOND BOLDT IN
SUPPORT OF THE DEBTORS' OBJECTION TO THE CLAIM OF
COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST (CLAIM NO. 1003)**

I, Raymond Boldt, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. My name is Raymond Boldt. I am an employee of Zachry Industrial Inc. ("Zachry") and my job title is Project Estimator. I have over twenty years of experience in estimating costs for Zachry, including estimates for change orders, Zachry bid submissions and evaluating subcontractor bids and charges.

2. I am responsible for providing electrical and instrumentation technical and field support on the Standing Bear Lake Station (SBLS) project Zachry is building for Omaha Public Power Department (OPPD). My responsibilities have included different aspects of cost estimation, change management and coordination of work by Zachry and subcontractors on the SBLS project. I have had personal involvement in aspects of Commonwealth's and its affiliates' work on Zachry's OPPD projects.

3. Since March 2024, I have been involved in Zachry's efforts to identify and correct defective and incomplete work by Commonwealth on the SBLS project and have personal knowledge of the scope and costs associated with Zachry's efforts. In order to document those costs, I worked with Zachry support personnel to prepare the materials contained in **Exhibits 1-9** attached to this declaration.

4. Zachry entered into Service Agreement #115001-605028 with Commonwealth Electric (the "Service Agreement"), under which Commonwealth Electric was to perform certain electrical work in support of the SBLS project. Commonwealth's work under the Service

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.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



Agreement included installation and testing of various switchgear, circuits, and instrument and power cables needed on the project, including associated hardware, junctions, penetration seals (called Roxtec), conduit, cable trays, panels, supports, and terminations. Zachry terminated Commonwealth's work under the Service Agreement on May 15, 2024. From May through October 2024, Zachry and its subcontractor inspected work that Commonwealth was obligated to perform under the Service Agreement. As a result of the inspections, Zachry determined that Commonwealth had either not completed work within their work scope, or Commonwealth's work was defective and required corrective work.

5. Zachry has incurred costs for self-performed work, subcontractor work and third party supplied materials to complete and correct Commonwealth's defective work (hereinafter "Corrective Work"). The scope of the Corrective Work and the related costs are reflected in **Exhibits 1 through 8** attached to this declaration.

6. The majority of Commonwealth's incomplete and defective work was identified in four Zachry back charge notifications (BCNs), numbered BCN-00127 (attached hereto as **Exhibit 1**), BCN-0163 (attached hereto as **Exhibit 2**), BCN-164 (attached hereto as **Exhibit 3**) and BCN-165 (**Exhibit 4**). The defective work in these BCNs included, but was not limited to:

- a. the absence of floor plates in multiple areas, resulting in the need to remove and reinstall cables in accordance with site requirements.
- b. various cables were found to be damaged, and there were issues with the formation of cables on the trays and panels.
- c. certain installations were found to be lacking Roxtec.
- d. multiple discrepancies in various panels upon final testing procedures.
- e. missing circuits and other components

7. In order to reduce the impact of Commonwealth's incomplete and defective work, Zachry utilized its own direct labor and subcontractors under Zachry's direction to promptly inspect, phone, re-terminate, and test affected cables; and install necessary missing or incorrectly installed components such as floor plates, circuits, panels and Roxtec.

8. The calculations used to determine the costs in **Exhibits 1-4** are contained in cost summaries for each BCN that show (1) third party labor charges; (2) estimated Zachry technical and engineering support and field construction support costs based on historical standards developed by Zachry; and (3) third party construction material costs, including a markup on third party construction material based on Zachry's contracts with Commonwealth. These costs are further supported by detailed Extra Work Orders reports from Zachry's subcontractors, responses to Requests for Information from OPPD, technical drawings, test results, annotated photographs, and materials lists, all of which I understand are being separately provided to Commonwealth by Zachry's counsel. The costs for Corrective work in **Exhibits 1-4** total \$1,009,015.

9. In addition to the defective work referenced in each back charge notification, Zachry also discovered other defective work by Commonwealth that is referenced in **Exhibits 5-8**.

10. Commonwealth unnecessarily installed redundant cabling (known as “cable pulling”) at the Standing Bear Lake Station project inconsistent with its assigned scope of work. This problem was made worse by Commonwealth’s failure to adequately document its cable pulling. As a result, Zachry not only paid for Commonwealth’s redundant cable pulling work, Zachry also incurred costs for identifying and resolving issues caused by the redundant cable pulling. The costs associated with the multiple, redundant cable pulling are reflected in **Exhibit 5**, and total \$876,066.

11. The costs in **Exhibit 5** were calculated by first determining the total linear feet of cable installed and assessing how much of that cable was installed by Commonwealth. We then determined the rate of duplicative cable pulling by Commonwealth, estimated the amount of time spent by Commonwealth on the duplicative cable pulls and the cost of that labor. We then determined the cost of the cable in the duplicative cable pulls and applied appropriate markups to these third-party material costs and labor based on Commonwealth’s contracts and Zachry’s historical information.

12. Portions of Commonwealth’s defective work were located at elevation. Accordingly, Zachry was required to rent and erect scaffolding to perform the Corrective Work and then remove that scaffolding. The costs associated with the scaffolding are reflected in **Exhibit 6**, and total \$195,806.

13. The costs reflected in **Exhibit 6** were calculated based on Zachry labor costs to erect and remove the scaffolding and third party scaffolding rental charges. The labor costs were determined by taking the total number of hours for the Corrective Work in Exhibits 1-4 and estimating how much time was spent by Zachry employees erecting and removing scaffolding in support of that work based on historical information. Zachry’s average labor rate was then applied to the scaffolding labor hours. Third party scaffolding rental charges were determined by taking the total number of workdays reflected in Exhibits 1-4 and multiplying that by the daily scaffolding rental charge, taking into account weekends and rainout days for which Zachry paid scaffolding rental charges even though work was not taking place. A 10 percent markup was applied to the third-party rental costs in accordance with Zachry’s contracts with Commonwealth.

14. In order to complete the Corrective Work, Zachry had to purchase additional materials and supplies not reflected in the back charge notifications, including additional cable, conduit, cable terminations and cable trays. The costs associated with these repair materials and supplies are reflected in **Exhibit 7**, and total \$183,095.

15. The costs in **Exhibit 7** were determined by taking the total lengths of cable and conduit and multiplying those lengths by the cost per linear foot of the material. The cost of

additional cable terminations was determined by multiplying the number of terminations by the average cost per termination. A ten percent markup was applied to these third-party material charges in accordance with Zachry's contracts with Commonwealth.

16. Zachry determined that there were additional costs resulting from Commonwealth's work that were not captured in the back charges reflected in Exhibits 1 – 4. These additional miscellaneous costs are reflected in **Exhibit 8**, and total \$388,000. These costs are comprised of:

- a. Improper charges by Commonwealth for its employees' smoke breaks when the jobsite was required to be tobacco free under the parties' contracts. These smoke breaks resulted in approximately 500 lost work hours for which Zachry was charged but obtained no benefit. The cost to Zachry of these lost work hours was calculated using the average labor costs charged by Commonwealth and Zachry's subcontractor that performed Corrective Work.
- b. Indirect labor costs to takeover and effectuate the completion and correction of Commonwealth's work. The amount of this labor was determined to be in excess of 2000 hours of time for Zachry employees in supervision, procurement and support functions not otherwise captured in Zachry's back charge notices.
- c. Third party labor charges for Zachry's subcontractor to complete smaller tasks not otherwise captured by a specific Extra Work Order. These charges are for actual work performed and charged by the subcontractor while addressing various Commonwealth deficiencies that would be found in Zachry's ongoing work deficiency lists. Based on the limited amount of time and cost required for each individual task, the third-party labor did not warrant individual tracking by way of an Extra Work Order. These charges were taken from third party invoicing.

17. **Exhibit 10** contains a summary of all the costs in **Exhibits 1-8**, which total \$2,651,982.

18. Commonwealth's incomplete and defective work also caused approximately 15 days of delay in Zachry's schedule for substantial completion of the SBLS project. As a result, Zachry faces potential liquidated damages for those delays under its contract with OPPD that total \$2.1M. These costs were calculated in **Exhibit 9** by taking the total hours of work reflected in Exhibits 1-4, converting those hours to workdays and applying the daily liquidated damages rate from the Second Amendment to Zachry's contract with OPPD.

19. All of the costs addressed in my declaration were calculated based on industry standard estimating practices and references, as well as Zachry practices and procedures that I and other Zachry employees regularly use and rely on in estimating work on Zachry projects similar the Standing Bear Lake Station project.

Executed on February 20, 2025

/s/ Raymond Boldt
Raymond Boldt

EXHIBIT 1

BCN-00127

ZACHRY

FINAL BILLING PACKAGE

Project Name – Standing Bear Lake Station (SBLS) Project

Date: 10/10/2024

Extra Work Notification**To: Commonwealth Electric Company of the Midwest****Doc Control No.:** BCN - 00127**Address:** 3910 South Street, Lincoln, NE 68506**Agreement / PO No.:** 115001-605028**Attn:****Cost Code No.:****Email:****Document No.:** Multiple EWO

Zachry is hereby providing a notice of back charge pursuant of the purchase agreement between Zachry and Commonwealth Electric Company of the Midwest. Zachry is providing notice for the corrective work described below in accordance with the contract specifications. Commonwealth Electric Company of the Midwest shall sign and return acknowledging receipt of this Final Billing Package within 2 business days. Commonwealth Electric Company of the Midwest will be back-charged for the corrective work in accordance with the agreement. In addition, schedule impacts to Zachry may apply.

Description of Corrective Work & Location:

Description: Upon inspection, several problems were identified with the work carried out by Commonwealth Electric. These included the absence of floor plates in multiple areas, resulting in the need to remove and reinstall cables in accordance with site requirements. Additionally, various cables were found to be damaged, and there were issues with the formation of cables on the trays and panels. Furthermore, installations were found to be lacking Roxblox.

Corrective Action: In order to reduce the effect on the construction timeline, ZII direct labor and subcontractor's ISC promptly addressed the identified issues by phoning, re-terminating, testing affected cables, and installing necessary missing components like floor plates and Roxblox. For a detailed breakdown of activities, please refer to Table 1.

Continue in Page 2....**Total Estimated Extra Work Cost:****\$ 523,308.85****Zachry – Project Control Manager****Commonwealth Electric Company of the Midwest**_____
Print Name_____
Print Name_____
Signature_____
Signature_____
Date_____
Date**Return To:**

Hunter Edmondson – Project Controls Manager
6633 N 120th Street
Omaha, NE 68184
210-844-7290

CC:

Lyle Fouts – EPC Project Manager
Gil Craft – Construction Project Manager
Karen Latham – Cost Manager
Theresa Hanes – Business Manager
Travis Goodrich – Project Engineer
Michelle Stewart – Procurement Project Manager
Staci Tijerina – Accounts Payable Supervisor

Table 1

EWO Number	EWO Date	Foreman	Description of Work	Field Comments
001	5/30/2024	Edward Gonzalez	Removed roxblox and pull cables out from MCC-117 section 3 and 4 and installed floor plates.	MCC-117 Section 3 and 4: Removed roxblox, pull out cables, prep and install floor plates, identify and phone cables, identify damaged cable pull by CW.
002	5/31/2024	Edward Gonzalez	Remove roxblox and pull out cables from MCC-116 section 8 and 9 to install floor plate.	MCC-116 Section 8 and 9: Remove roxblox and pull out cables, phone and identify power cables. 0LVB-266-RCP (20' 3/C #6 w/ GND), 0LOA-102-M (20' 3/C #6 w/ GND).
003	6/2/2024	Keithon Parker	Determ feeders for MCC-117 to install floor plate.	0LVB-117-MCC Main feeders: Identify and test cables - 12 cables (determ and tail out 390'), tail in and terminate cables - 12 cables (390' and 220 terms), fabricate and install floor plate with meyers hub. 3 GND cables 4/0 (G1, G2, G3). 9 feeders 750 kwil (A1, A2, A3, B1, B2, B3, C1, C2, C3). 0LVB-3E0117-SWG.
004	6/2/2024	Edward Gonzalez	Determ instrument and power cables, pull out cables to install floor plate MCC-116.	0LVB-116-MCC Bucket 03F, 04C, 05A: Disconnect instrument and poewr cables - 6 cables, removed roxblox and pull out cables - 120', fabricate and install floor plates with meyers hub. 0WDA-3E0014B-01-01 (3C 12 with G) (8 terms), 0WDA-3E0016B-01-02 (3C 12 with G) (6 terms), 0WDA-3E0016A-01-01 (3C 12 with G) (8 terms), 0WDA-3E0016A-01-02 (3C 12 with G) (6 terms).
005	6/4/2024	Craig Guilbeau	Determ feeders for MCC-116 main to install floor plate. Install floor plates, tail in and terminate cables and installed roxblox.	0LCB_116-MCC (Main Feeders): Identify, phone and test cables (12 cables), remove roxblocks and pull out cables (240'), Knockout 4" holes on floor plate and installed meyers hubs, close nipples and GND bushings. 3 GND cables 4/0 (G1, G2, G3), 9 feeders 750 dcml (A1, A2, A3, B1, B2, B3, C1, C2, C3). 0LVB-3E0116-01. 0LVB-116-MCC bucket 03F, 04C, 05A: Tail in cables into coresponding bucket (6 cables(120')), install roxblox, terminate cables. Section 03F: 0WDA-3E0016A-01-02, 0WDA-3e0016-01-01. Section 04C: 0WDA-3E0016B-01-01, 0WDA-3E0016B- 01-02. Section 05A: 0WDA-3E0017A-01-01, 0WDA-3E0017A-01-02.
008	6/5/2024	Edward Gonzalez	Tail in, terminate, and test cables for MCC-117. Install roxblox and terminate GND cables.	0LVB_117-MCC (main feeders): Prep and terminate feeders for MCC-117 (0LVB-3E0117-01) A1, A2, A3, B1, B2, B3, C1, C2, C3 (Single conductor 750kcmil) (9 terms). Prep and terminate GND cables for MCC-117 (0LVB-3E0117-01) G1, G2, G3 (3 terms single conductor 4/0). Install roxblox.
011	6/7/2024	Roberto Cotero	BOP missing plate under CFA-902. 18 circuits reworked.	Verify terms and re-term the following: 0WDA-1C3013-02-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables), 0ILB-2C3165-01-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', reterm 3 cables), 0ILB- 2C3113-01-01 (4c #14 awg, de-term 4 cables, pull back 15', tail in 15', re-term 4 cables), 0ILB-2C3112-01-01 (4c #14 awg, de-term 4 cables, pull back 15', tail in 15', reterm 4 cables), 0ILB-2C3111-01-01 (4c #14 awg, de-term 4 cables, pull back 15', tail in 15', re-term 4 cables), 0ILB-2C3147-01-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables), 0ILB-2C3145-01-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables)

012	6/8/2024	Roberto Cotero	Re-work of 18 circuits at EFA-902 due to missing plate at BOP bottom.	Re-working circuits: OWDA-1C3013-02-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables), OILB-2C3165-01-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables), OILB-2C3113-01-01 (4c #14 awg, de-term 4 cables, pull back 15', tail in 15', re-term 4 cables), OILB-2C3112-01-01 (4c #14 awg, de-term 4 cables, pull back 15', tail in 15', re-term 4 cables), OILB-2C3111-01-01 (4c #14 awg, de-term 4 cables, pull back 15', tail in 15', re-term 4 cables), OILB-2C3147-01-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables), OILB-2C3145-01-01 (1pr #16, de-term 3 cables, pull back 15', tail in 15', re-term 3 cables). Verify all circuits end to end, reworking both ends due to improper cable management. The following were not done due to loops: OWDA-1C3505-01-01, OWDA-1C3504-01-01, OWDA-2C3013-02-02, OILB-2C3173-01-01, OILB-2C3459-01-01, OILB-2C3161-01-01, OILB-2C3146-01-01, OILB-2C3169-01-01, OILB-2C3157-01-01, OILB-2C3144-01-01, OILB-2C3111-01-01, OILB-2C3112-01-01.
018	7/13/2024	Craig Guilbeau	Verification of phasing on primary side of (XFMR) transformers (15KV) due to missing or incomplete documents from CW.	Verify phasing done by CW due to them not turning in inspection paperwork for primary side of transformers: OLVB-001-XFMR, OLVB-011A-XFMR, OLVB-002-XFMR, OLVB-011C-XFMR, OLVB-003-XFMR, OLVB-011B-XFMR. Work permits had to be pulled to initiate work from commission. Permits then had to be signed by commission, Zachry safety, and LOTO manager. Locks and tags were installed and signed into log for lock box. Removed all covers on transformers and began disconnecting primary feeders. 1/2" stainless steel hardware locked up and had to be cut with a Sawzall to separate cables. Once both sides of cables were disconnected, we did a continuity check and cables were verified by ISC. We then replaced mix match hardware to 1/2" Stainless steel bolts and re-connected all cables back to the bus bar. Contacted QC to come and witness torque of each individual feeders at each transformer and then marked bolts. Proceeded with wiping down with denatured alcohol, vacuum, and clean. We then cleaned the covers and closed them on each transformer.
019	7/20/2024	Armando Ramos	Replace damaged boots on OMVB-002-SWG in PDC-2.	Repaired the damaged boot on OMVB-002-SWG in PDC-2 by cutting and removing the damaged stress cone boot. Afterward, we cleaned the cables and installed a new boot.

021	6/24/2024	Armando Ramos	Remove and replace #750 lugs damaged by CW on OLVB-011B Switchgear, section 10C in PDC-3.	The crew obtained the permit from the LOTO Manager to start work on the OLVB-011B Switchgear, section 10C in PDC-3. We began by removing bolts from the bus bar one at a time to replace them with 1/2" silicone bronze hardware. During this process, we discovered that 27 of the lugs had been drilled out. We documented this issue and took photographs to record the previous work performed by CW. Following this, we removed the original Burndy lugs. Upper management directed us to have a welder use a grinder to remove the lugs. To contain and collect flying debris during this process, we set up a fiberglass curtain and secured each cable to a control surface, allowing us to cut the lugs without needing manual support. After the lugs were cut, we conducted a thorough cleaning of the switchgear interior using denatured alcohol and a vacuum to remove any debris or contaminants. We then re-lugged the cables for installation.
022	6/25/2024	Armando Ramos	Replace the bus bar in the OCNA breaker for both OLVB-011A and OLVB-011B switchgear in PDC-3.	(Continued) We removed the copper bus bar from the OLVB-011A and OLVB-011B switchgear.. The issue was that the lugs did not fit correctly on the existing plates due to an inadequate number of holes, making it impossible to secure the feeders properly. We replaced the old plates with new ones that were larger and featured additional holes, ensuring a proper installation for the feeders. This should have been recognized by CW during installation and brought to the engineers attention.
023	6/26/2024	Armando Ramos	Replace mix match hardware for OCNA-3E0101 in OLVB-011B that were initially installed by CW.	(Continued) We obtained a new permit and LOTO for work on the switchgear, which required signatures from the LOTO Manager, the commissioning department, and Zachry safety before we could proceed. Once approved, we opened section 10C to address the initial scope of work, which involved replacing mismatched bolts installed by CW. We swapped out the original zinc hardware for silicone bronze hardware. After completing this replacement, we properly formed and reattached all feeders to the bus bar. Then contacted QC to witness the torque and mark bolts as needed.
024	8/20/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-071 and BLP-072.	The work in CTO ACA-30 consisted of determining 26 (600V/500 01C and 600V/1/0 1C-G) cables associated with panel BLP-071 and 23 (600V/ 8 3C W/GND and 600V/14 4C) cables associated with panel BLP-072. Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings indicated that circuits related to panels BLP-071 and BLP-072 needed relabeling. Additionally, improper hardware was identified and required replacement. The following corrective measures were taken: cables were tagged with their corresponding circuit numbers, hardware was replaced from galvanized to silicone bronze for the ground wires and stainless steel for the power cables as per specifications listed

				in the drawing schematics. Lastly, cables from both panels were re-terminated and re-torqued
025	8/21/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-081 and BLP-082.	The work in CTO ACA-30 consisted of determinating 26 (600V/500 01C and 600V/1/0 1C-G) cables associated with panel BLP-081 and 25 (600V/ 8 3C W/GND and 600V/14 4C) cables associated with panel BLP-082. Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings indicated that circuits related to panels BLP-081 and BLP-082 needed relabeling. Additionally, improper hardware was identified and required replacement. The following corrective measures were taken: cables were tagged with their corresponding circuit numbers, hardware was replaced from galvanized to silicone bronze for the ground wires and stainless steel for the power cables as per specifications listed in the drawing schematics. Lastly, cables from both panels were re-terminated and re-torqued.
026	8/22/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-091 and BLP-092.	The work in CTO ACA-30 consisted of determinating 14 (600V/500 01C and 600V/1/0 1C-G) cables associated with panel BLP-091 and 23 (600V/8 3C W/GND and 600V/14 4C) cables associated with panel BLP-092 . Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panels BLP-091 and BLP-092 required relabeling, corrective measures were taken. Cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
027	8/23/2024	Jose Regalado	(Continued) QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-091 and BLP-092.	(Continued) Per yesterdays findings associated with panels BLP-091 and BLP-092 about incorrect harware finish being installed, we had to replace galvanized harware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from panels BLP-091 and BLP-092 were re-terminated and re-torqued.

028	8/24/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-061 and BLP-062.	The work in CTO ACA-20 consisted of determining 24 (600V/ 500 1C and 600V/ 1/0 1C-G) cables associated with panel BLP-061 and 20 (600V/8 3C W/GND and 600V/14 4C) cables associated with panel BLP-062 . Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panels BLP-061 and BLP-062 required relabeling, however circuit 6LVB-3E0261-01-B3 was left pending due failure to pass electrical testing procedures further direction is required. The remaining cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
029	8/26/2024	Jose Regalado	(Continued) QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-061 and BLP-062	(Continued) Per Saturday's findings associated with panels BLP-061 and BLP-062 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from panels BLP-061 and BLP-062 were re-terminated and re-torqued.
030	8/27/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panel BLP-052	The work in CTO ACA-20 consisted of determining 600V/8 3C W/GND and 600V/14 4C cable types associated with panel BLP-052 . Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panel BLP-052 required relabeling, corrective measures were taken. Cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
031	8/28/2024	Jose Regalado	(continued) QC walked down and verified circuits due to missing or incomplete documents from CW for panel BLP-052	(Continued) Per yesterdays findings associated with panels BLP-052 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables as per specifications listed in the drawing schematics. Lastly, cables from panel BLP-052 were re-terminated and re-torqued.

032	8/29/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panel BLP-051	The work in CTO ACA-20 consisted of determining 600V/500 01C, 600V/1/0 1C-G, and 600V-500-03C-SH-W/GNDS cable types associated with panel BLP-051. Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings indicated that circuits related to panels BLP-051 needed relabeling. Additionally, improper hardware was identified and required replacement. The following corrective measures were taken: cables were tagged with their corresponding circuit numbers, hardware was replaced from galvanized to silicone bronze for the ground wires and stainless steel for the power cables as per specifications listed in the drawing schematics. Lastly, cables from panels were re-terminated and re-torqued.
033	8/30/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-041 and BLP-042	The work in CTO ACA-20 consisted of determining 600V/12 4C, 600V/500 01C and 600V/1/0 1C-G cable types associated with panel BLP-041 and 600V/8 3C W/GND, 600V/14 4C and 600V-500-03C-SH-W/GNDS cables types associated with panel BLP-042. Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panels BLP-041 and BLP-042 required relabeling, corrective measures were taken. Cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
034	8/31/2024	Jose Regalado	(Continued) QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-041 and BLP-042.	(Continued) Per yesterday's findings associated with panels BLP-041 and BLP-042 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from only panel BLP-041 were re-terminated and re-torqued. Panel BLP-042 was left pending to complete.
035	9/2/2024	Jose Regalado	(Continued) QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-041 and BLP-042.	(Continued) Per Friday's findings associated with panels BLP-041 and BLP-042 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from panel pending completion (BLP-042) were re-terminated and re-torqued.

036	9/5/2024	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-031 and BLP-032.	The work in CTO ACA-10 consisted of determining 600V/12 4C, 600V/500 01C and 600V/1/0 1C-G cable types associated with panel BLP-031 and 600V/8 3C W/GND, 600V/14 4C and 600V-500-03C-SH-W/GNDS cables types associated with panel BLP-032 . Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panels BLP-031 and BLP-032 required relabeling, corrective measures were taken. Cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
037	9/6/2024	Jose Regalado	(Continued) QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-031 and BLP-032.	(Continued) Per yesterday's findings associated with panels BLP-031 and BLP-032 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from both panels were re-terminated and re-torqued.

The attached cost DOES NOT include all the required labor hours and material costs to complete the corrective work, as corrective work is ongoing. If Commonwealth Electric Company of the Midwest is in agreement with the terms detailed herein, please sign and return this Final Billing Package to Zachry to confirm acceptance.

Cost Summary

OTHER FACTORS	
Is the Work Elevated In the rack ? Y or N	Yes
Does the work require Scaffold ? Y or N	Yes
Does the work require Warehouse Support ? Y or N	Yes
Is the Rework in place (designed location) ? Y or N	Yes
Is Additional NDE Required ? Y or N	No
Is Turnover / Closeout Required (ITR) ? Y or N	Yes
Is additional Logistics Required ? Y or N	No
Is 3rd Party Sub Needed ? Y or N	Yes
Is there a delay due to Dewatering ? Y or N	No
Is LOTO required ? Y or N	Yes

3rd PARTY LABOR:

	Man Power	Hours	Rate	TOTAL
EWO-001 Removed roxblox and pull cables out				
Foreman	1	3	\$ 84.40	\$ 253.20
Journeyman Electrician	1	3	\$ 78.51	\$ 235.53
Journeyman Electrician Licensed	1	3	\$ 78.51	\$ 235.53
Foreman	1	5	\$ 116.84	\$ 584.20
Journeyman Electrician	1	5	\$ 108.00	\$ 540.00
Journeyman Electrician Licensed	1	5	\$ 108.00	\$ 540.00
EWO-002 Remove roxblox and pull out cables from MCC-116 section 8 and 9 to install floor plate.				
Foreman	1	0.25	\$ 84.40	\$ 21.10
Journeyman Electrician	1	1.5	\$ 78.51	\$ 117.77
Foreman	1	0.75	\$ 116.84	\$ 87.63
Journeyman Electrician	1	2.5	\$ 108.00	\$ 270.00
EWO-003 Determ feeders for MCC-117 to install floor plate.				
Journeyman Electrician	1	1.5	\$ 78.51	\$ 117.77
Helper/Apprentice	2	5	\$ 56.72	\$ 283.60
Instrument Technician	1	2	\$ 84.40	\$ 168.80
Journeyman Electrician	1	4.5	\$ 108.00	\$ 486.00
Helper/Apprentice	2	7	\$ 76.22	\$ 533.54
Instrument Technician	1	4.5	\$ 116.84	\$ 525.78
EWO-004 Determ feeders for MCC-116 main to				
Foreman	1	1	\$ 84.40	\$ 84.40
Journeyman Electrician	2	9.5	\$ 78.51	\$ 745.85
Helper/Apprentice	2	9.5	\$ 56.72	\$ 538.84
Foreman	1	2	\$ 116.84	\$ 233.68
Journeyman Electrician	2	14.5	\$ 108.00	\$ 1,566.00
Helper/Apprentice	2	14.5	\$ 76.22	\$ 1,105.19
EWO-005 Determ instrument and power cables, pull out cables to install floor plate MCC-116.				
Foreman	1	2.5	\$ 84.40	\$ 211.00
Journeyman Electrician	3	5	\$ 78.51	\$ 392.55
Journeyman Electrician Licensed	1	2	\$ 78.51	\$ 157.02
Foreman	1	4	\$ 116.84	\$ 467.36
Journeyman Electrician	3	7	\$ 108.00	\$ 756.00
Journeyman Electrician Licensed	1	4	\$ 108.00	\$ 432.00
EWO-008 Tail in, terminate, and test cables for MCC-117. Install roxblox and terminate GND cables.				
Foreman	1	4	\$ 84.40	\$ 337.60
Journeyman Electrician	3	11.5	\$ 78.51	\$ 902.87
Journeyman Electrician Licensed	1	4	\$ 78.51	\$ 314.04
Foreman	1	6.5	\$ 116.84	\$ 759.46
Journeyman Electrician	3	17.5	\$ 108.00	\$ 1,890.00
Journeyman Electrician Licensed	1	6	\$ 108.00	\$ 648.00
EWO-011 BOP missing plate under CFA-902. 18 circuits reworked.				
Foreman	1	1	\$ 84.40	\$ 84.40
Journeyman Electrician	2	8	\$ 78.51	\$ 628.08
Foreman	1	1.5	\$ 116.84	\$ 175.26

Journeyman Electrician		2	12	\$ 108.00	\$ 1,296.00
EW0-012 Re-work of 18 circuits at EFA-902 due to missing plate at BOP bottom					
Foreman		1	1	\$ 84.40	\$ 84.40
Journeyman Electrician		2	8	\$ 78.51	\$ 628.08
Foreman		1	1.5	\$ 116.84	\$ 175.26
Journeyman Electrician		2	12	\$ 108.00	\$ 1,296.00
EW0-018 Verification of phasing on primary side of (XFMR) transformers (15KV) due to missing documents from CW.					
Helper/Apprentice		4	19	\$ 56.72	\$ 1,077.68
Journeyman Electrician		4	19	\$ 78.51	\$ 1,491.69
Journeyman Electrician Licensed		1	4	\$ 78.51	\$ 314.04
Helper/Apprentice		4	29	\$ 76.22	\$ 2,210.38
Journeyman Electrician		4	30.5	\$ 108.00	\$ 3,294.00
Journeyman Electrician Licensed		1	8	\$ 108.00	\$ 864.00
EW0-020 Admin CR Room under floor correct (3) 12 count fibers in cable tray from Duct bank to CFA901.					
Helper/Apprentice		1	1	\$ 56.72	\$ 56.72
Journeyman Electrician		2	2	\$ 78.51	\$ 157.02
Journeyman Electrician Licensed		1	1	\$ 78.51	\$ 78.51
EW0-021 Remove and replace #750 lugs damaged by CW on 0LVB-011B Switchgear, section 10C in PDC-3.					
Helper/Apprentice-Fire Watch		1	5	\$ 56.72	\$ 283.60
Journeyman Electrician		2	10	\$ 78.51	\$ 785.10
Welder		1	5	\$ 78.51	\$ 392.55
Foreman		1	1	\$ 84.40	\$ 84.40
Helper/Apprentice-Fire Watch		1	7	\$ 76.22	\$ 533.54
Journeyman Electrician		2	14	\$ 108.00	\$ 1,512.00
Welder		1	7	\$ 108.00	\$ 756.00
Foreman		1	2	\$ 116.84	\$ 233.68
EW0-022 Replace the bus bar in the 0CNA breaker for both 0LVB-011A and 0LVB-011B switchgear in PDC-3.					
Foreman		1	0.5	\$ 84.40	\$ 42.20
Journeyman Electrician		2	6.5	\$ 78.51	\$ 510.32
Foreman		1	1.5	\$ 116.84	\$ 175.26
Journeyman Electrician		2	9.5	\$ 108.00	\$ 1,026.00
EW0-023 Replace mix match hardware for 0CNA-3E0101 in 0LVB-011B that were initially installed by CW					
Foreman		1	0.5	\$ 84.40	\$ 42.20
Journeyman Electrician		2	9	\$ 78.51	\$ 706.59
Foreman		1	1.5	\$ 116.84	\$ 175.26
Journeyman Electrician		2	14	\$ 108.00	\$ 1,512.00
EW0-024 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-071 and BLP-072.					
Foreman		3	15	\$ 84.40	\$ 1,266.00
Journeyman Electrician		13	60.5	\$ 78.51	\$ 4,749.86
Helper/Apprentice		1	10	\$ 56.72	\$ 567.20
Foreman		3	23	\$ 116.84	\$ 2,687.32
Journeyman Electrician		13	90	\$ 108.00	\$ 9,720.00
Helper/Apprentice		1	14	\$ 76.22	\$ 1,067.08
EW0-025 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-081 and BLP-082					
Foreman		3	13.5	\$ 84.40	\$ 1,139.40
Journeyman Electrician		14	67	\$ 78.51	\$ 5,260.17
Foreman		3	20.5	\$ 116.84	\$ 2,395.22
Journeyman Electrician		14	101	\$ 108.00	\$ 10,908.00
EW0-026 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-091 and BLP-092					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		6	28	\$ 78.51	\$ 2,198.28
Helper/Apprentice		1	5	\$ 56.72	\$ 283.60
Foreman		1	4	\$ 116.84	\$ 467.36
Journeyman Electrician		6	42	\$ 108.00	\$ 4,536.00
Helper/Apprentice		1	7	\$ 76.22	\$ 533.54
EW0-027 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-091 BLP-09					
Foreman		1	5.5	\$ 84.40	\$ 464.20

Journeyman Electrician		7	31.5	\$ 78.51	\$ 2,473.07
Helper/Apprentice		2	9.5	\$ 56.72	\$ 538.84
Foreman		1	7.5	\$ 116.84	\$ 876.30
Journeyman Electrician		7	49.5	\$ 108.00	\$ 5,346.00
Helper/Apprentice		2	14.5	\$ 76.22	\$ 1,105.19
EW0-028 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-061 and BLP-06					
Foreman		1	5	\$ 84.40	\$ 422.00
Journeyman Electrician		4	16	\$ 78.51	\$ 1,256.16
Helper/Apprentice		2	8	\$ 56.72	\$ 453.76
Foreman		1	6	\$ 116.84	\$ 701.04
Journeyman Electrician		4	24	\$ 108.00	\$ 2,592.00
Helper/Apprentice		2	12	\$ 76.22	\$ 914.64
EW0-029 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-61 and BLP-62					
Foreman		1	5.5	\$ 84.40	\$ 464.20
Journeyman Electrician		7	33.5	\$ 78.51	\$ 2,630.09
Helper/Apprentice		1	5	\$ 56.72	\$ 283.60
Foreman		1	7.5	\$ 116.84	\$ 876.30
Journeyman Electrician		7	50.5	\$ 108.00	\$ 5,454.00
Helper/Apprentice		1	7	\$ 76.22	\$ 533.54
EW0-030 QC walked down and verified circuits due to missing or incomplete documents from CW for panel BLP-052.					
Foreman		1	5.5	\$ 84.40	\$ 464.20
Journeyman Electrician		7	33.5	\$ 78.51	\$ 2,630.09
Helper/Apprentice		1	5	\$ 56.72	\$ 283.60
Foreman		1	7.5	\$ 116.84	\$ 876.30
Journeyman Electrician		7	50.5	\$ 108.00	\$ 5,454.00
Helper/Apprentice		1	7	\$ 76.22	\$ 533.54
EW0-031 QC walked down and verified circuits due to missing or incomplete documents from CW for panel BLP-052					
Foreman		1	5.5	\$ 84.40	\$ 464.20
Journeyman Electrician		7	29	\$ 78.51	\$ 2,276.79
Helper/Apprentice		1	2	\$ 56.72	\$ 113.44
Foreman		1	7.5	\$ 116.84	\$ 876.30
Journeyman Electrician		7	44	\$ 108.00	\$ 4,752.00
Helper/Apprentice		1	3	\$ 76.22	\$ 228.66
EW0-032 QC walked down and verified circuits due to missing or incomplete documents from CW for panel BLP-051					
Foreman		1	6.5	\$ 84.40	\$ 548.60
Journeyman Electrician		6	33.5	\$ 78.51	\$ 2,630.09
Foreman		1	8.5	\$ 116.84	\$ 993.14
Journeyman Electrician		6	50.5	\$ 108.00	\$ 5,454.00
EW0-033 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-041 and BLP-042					
Foreman		1	6	\$ 84.40	\$ 506.40
Journeyman Electrician		6	30	\$ 78.51	\$ 2,355.30
Foreman		1	8.5	\$ 116.84	\$ 993.14
Journeyman Electrician		6	48	\$ 108.00	\$ 5,184.00
EW0-034 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-041 and BLP-042					
Foreman		1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician		6	20	\$ 78.51	\$ 1,570.20
Foreman		1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician		6	30	\$ 108.00	\$ 3,240.00
EW0-035 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-041 and BLP-042					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		6	14.5	\$ 78.51	\$ 1,138.40
Helper/Apprentice		1	2.5	\$ 56.72	\$ 141.80
Foreman		1	3	\$ 116.84	\$ 350.52

Journeyman Electrician		6	21.5	\$ 108.00	\$ 2,322.00
Helper/Apprentice		1	3.5	\$ 76.22	\$ 266.77
EWO-036 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-031 and BLP-032					
Foreman		1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician		5	25	\$ 78.51	\$ 1,962.75
Helper/Apprentice		1	6	\$ 56.72	\$ 340.32
Foreman		1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician		5	37	\$ 108.00	\$ 3,996.00
Helper/Apprentice		1	8	\$ 76.22	\$ 609.76
EWO-037 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-031 and BLP-032					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		5	27	\$ 78.51	\$ 2,119.77
Foreman		1	3	\$ 116.84	\$ 350.52
Journeyman Electrician		5	41	\$ 108.00	\$ 4,428.00
Project Controls, Quality Control, and safety Support / Assembly Documentation					
Safety Facilitator/Technician		4	125	\$ 84.40	\$ 10,550.00
Quality Inspector		1	31	\$ 78.51	\$ 2,433.81
Project Control/Scheduler		1	31	\$ 84.40	\$ 2,616.40
Safety Facilitator/Technician		4	187	\$ 127.50	\$ 23,842.50
Quality Inspector		1	47	\$ 126.60	\$ 5,950.20
Project Control/Scheduler		1	47	\$ 217.50	\$ 10,222.50
Dedicated crew to inspect work performed by Commonwealth to					
Foreman		1	19	\$ 84.40	\$ 1,603.60
Journeyman Electrician		1	168.5	\$ 78.51	\$ 13,228.94
Foreman		1	28	\$ 116.84	\$ 3,271.52
Journeyman Electrician		1	252.5	\$ 108.00	\$ 27,270.00
SUBTOTAL LABOR			2,813.00	\$	277,176.30

3RD PARTY TECHNICAL AND FIELD SERVICES

Description	TOTAL
Technical and Engineering Support (40% of Labor)	\$ 110,870.52
Field Construction Support (40%)	\$ 110,870.52
SUBTOTAL 3RD PARTY TECHNICAL AND FIELD SERVICES	\$ 221,741.04

3RD PARTY CONSTRUCTION MATERIAL

Material	QTY	UOM	Rate	TOTAL
Electrical material and construction consumables			\$ 22,174.10	\$ 22,174.10
SUBTOTAL 3RD PARTY CONSTRUCTION MATERIAL				\$ 22,174.10

MARKUP

Markup on 3rd Party Construction Material (10%)	\$ 2,217.41
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TOTAL	\$ 523,308.85
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EXHIBIT 2

BCN-00163

ZACHRY

FINAL BILLING PACKAGE

Project Name – Standing Bear Lake Station (SBLS) Project

Date: 10/10/2024

Extra Work Notification**To: Commonwealth Electric Company of the Midwest****Doc Control No.:** BCN - 00163**Address:** 3910 South Street, Lincoln, NE 68506**Agreement / PO No.:** 115001-605028**Attn:****Cost Code No.:****Email:****Document No.:** Multiple EWO

Zachry is hereby providing a notice of back charge pursuant of the purchase agreement between Zachry and Commonwealth Electric Company of the Midwest. Zachry is providing notice for the corrective work described below in accordance with the contract specifications. Commonwealth Electric Company of the Midwest shall sign and return acknowledging receipt of this Final Billing Package within 2 business days. Commonwealth Electric Company of the Midwest will be back-charged for the corrective work in accordance with the agreement. In addition, schedule impacts to Zachry may apply.

Description of Corrective Work & Location:

Description: Upon inspection, several problems were identified with the work carried out by Commonwealth Electric. These included the absence of floor plates in multiple areas, resulting in the need to remove and reinstall cables in accordance with site requirements. Additionally, various cables were found to be damaged, and there were issues with the formation of cables on the trays and panels. Furthermore, installations were found to be lacking Roxblox.

Corrective Action: To minimize the impact on the construction schedule, ZII direct labor and subcontractor's ISC promptly addressed the identified issues by phoning, re-terminating, testing affected cables, and installing necessary missing components like floor plates and Roxblox. For a detailed breakdown of activities, please refer to Table 1.

Continue in Page 2....**Total Estimated Extra Work Cost:****\$ 149,344.61****Zachry – Project Control Manager****Commonwealth Electric Company of the Midwest**_____
Print Name_____
Print Name_____
Signature_____
Signature_____
Date_____
Date**Return To:**

Hunter Edmondson – Project Controls Manager
6633 N 120th Street
Omaha, NE 68184
210-844-7290

CC:

Lyle Fouts – EPC Project Manager
Gil Craft – Construction Project Manager
Karen Latham – Cost Manager
Theresa Hanes – Business Manager
Travis Goodrich – Project Engineer
Michelle Stewart – Procurement Project Manager
Staci Tijerina – Accounts Payable Supervisor

Table 1

EWO Number	EWO Date	Foreman	Description of Work	Field Comments
38	2024-09-10	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-021 and BLP-022.	The work in CTO ACA-10 consisted of determining 600V/12 4C, 600V/500 01C and 600V/1/0 1C-G cable types associated with panel BLP-021 and 600V/8 3CW/GND, 600V/14 4C and 600V-500-03C-SH-W/GNDS cables types associated with panel BLP-022. Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panels BLP-021 and BLP-022 required relabeling, corrective measures were taken. Cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
39	2024-09-11	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-021 and BLP-022.	(Continued) Per yesterday's findings associated with panels BLP-021 and BLP-022 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from both panels were re-terminated and re-torqued.
40	2024-09-13	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-011 and BLP-012.	The work in CTO ACA-10 consisted of determining 600V/12 4C, 600V/500 01C and 600V/1/0 1C-G cable types associated with panel BLP-011 and 600V/8 3C W/GND, 600V/14 4C and 600V-500-03C-SH-W/GNDS cables types associated with panel BLP-012. Electrical testing procedures were conducted, including megger/insulation testing to check cable integrity and continuity testing to verify correct phasing and labeling. The findings revealed that circuits associated with panels BLP-011 and BLP-012 required relabeling, however circuit 1LVB- 3E0211-01-C3 was left pending due failure to pass electrical testing procedures further direction is required. The remaining cables were tagged with their corresponding circuit numbers. Additionally, incorrect hardware type was identified according to drawing specifications, replacement was required.
41	2024-09-16	Jose Regalado	QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-011 and BLP-012.	(Continued) Per Friday's findings associated with panels BLP-011 and BLP-012 about incorrect hardware finish being installed, we had to replace galvanized hardware to silicone bronze for the ground wires and stainless steel for the power cables on both panels as per specifications listed in the drawing schematics. Lastly, cables from both panels were re-terminated and re-torqued. However we discovered circuit that 1LVB-3E0211-01-01 could not be terminated, because it was too short and did not reach its final destination. A change in route was attempted but cable still failed to reach its final destination, it was determined that this circuit would required to be repulled.

42	2024-09-16	Craig Hazlett	CW rework due to the findings of circuit discrepancies found by Zachry's engineer and ISC's fiber superintendent.	Upon preparing for the termination of OCMA-102-CAB in the admin building, associates identified several discrepancies: circuits were either unlabeled or labeled incorrectly. Before continuing work in cabinet OCMA-102- CAB,electrical testing procedures were conducted to accurately identify cables and relabeled them with their correct circuit numbers. Additionally, associates verified routes at both ends to ensure cables were landed to the appropriate equipment. Once this was completed, associates redressed the cables. A total of 23 cables were marked as complete.
43	2024-09-17	Jose Regalado	CW rework due to discrepancies found within panels BLP-092, BLP-082, BLP-072 by Zachry's QC during final walkdown.	Upon final walkdown with Zachry's QC (Jaime Salinas) it was discovered that the flex pertaining to fin fan motors associated with panels BLP- 092, BLP-082 and BLP-072 was improperly installed, flex connectors were no secured correctly, flex installation was poor and not up to standard. Corrective measures were required, we began by removing fin fan flooring covers, tightened flex connectors as needed, fixed poorly installed flex, and lastly flooring was put back in place and rebolted.
44	2024-09-17	Craig Hazlett	CW rework due to the findings of circuit discrepancies found by Zachry's engineer and ISC's fiber superintendent.	Work continued in cabinet OCMA-102-CAB located in the admin building, identifying discrepancies relating to circuits being either unlabeled or labeled incorrectly. Before continuing any progressive work in cabinet OCMA-102- CAB, electrical testing procedures were conducted to accurately identify cables and relabeled them with their correct circuit numbers. Additionally, associates verified routes at both ends to ensure cables were landed to the appropriate equipment. Once this was completed, associates redressed the cables. A total of 38 cables were marked as complete.
45	2024-09-18	Jose Regalado	CW rework due to discrepancies found within panels BLP-042, BLP-052, BLP-062 by Zachry's QC during final walkdown.	Upon final walkdown with Zachry's QC (Jaime Salinas) it was discovered that the flex pertaining to fin fan motors associated with panels BLP- 042, BLP-052 and BLP-062 was improperly installed, flex connectors were not secured correctly, flex installation was poor and not up to standard. Corrective measures were required, we began by removing fin fan flooring covers, tightened flex connectors as needed, fixed poorly installed flex, and lastly flooring was put back in place and rebolted.
46	2024-09-18	Craig Hazlett	CW rework due to the findings of circuit discrepancies found by Zachry's engineer and ISC's fiber superintendent.	Work continued in cabinet OCMA-102-CAB located in the admin building, identifying discrepancies relating to circuits being either unlabeled or labeled incorrectly. We also worked on a few circuits pertaining to cabinet OCMA-101-CAB. Before continuing any progressive work in cabinet OCMA-102-CAB, electrical testing procedures were conducted to accurately identify cables and relabeled them with their correct circuit numbers. Additionally, associates verified routes at both ends to ensure cables were landed to the appropriate equipment. Once this was completed, associates redressed the remaining cables. A total of 31 cables were marked as complete.

The attached cost DOES NOT include all the required labor hours and material costs to complete the corrective work, as corrective work is ongoing. If Commonwealth Electric Company of the Midwest is in agreement with the terms detailed herein, please sign and return this Final Billing Package to Zachry to confirm acceptance.

Cost Summary

OTHER FACTORS	
Is the Work Elevated In the rack ? Y or N	Yes
Does the work require Scaffold ? Y or N	No
Does the work require Warehouse Support ? Y or N	Yes
Is the Rework in place (designed location) ? Y or N	Yes
Is Additional NDE Required ? Y or N	No
Is Turnover / Closeout Required (ITR) ? Y or N	Yes
Is additional Logistics Required ? Y or N	No
Is 3rd Party Sub Needed ? Y or N	Yes
Is there a delay due to Dewatering ? Y or N	No
Is LOTO required ? Y or N	Yes

LABOR:

	Man Power	Hours	Rate	TOTAL
EWO-038 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-021 and BLP-022.				
Foreman	1	3.5	\$ 84.40	\$ 295.40
Journeyman Electrician	4	21	\$ 78.51	\$ 1,648.71
Foreman	1	4.5	\$ 116.84	\$ 525.78
Journeyman Electrician	4	31	\$ 108.00	\$ 3,348.00
EWO-039 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-021 and BLP-022.				
Foreman	1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician	6	26.5	\$ 78.51	\$ 2,080.52
Foreman	1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician	6	39.5	\$ 108.00	\$ 4,266.00
EWO-040 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-011 and BLP-012.				
Foreman	1	6	\$ 84.40	\$ 506.40
Journeyman Electrician	4	21	\$ 78.51	\$ 1,648.71
Helper/Apprentice	1	5.5	\$ 56.72	\$ 311.96
Foreman	1	9	\$ 116.84	\$ 1,051.56
Journeyman Electrician	4	31	\$ 108.00	\$ 3,348.00
Helper/Apprentice	1	8.5	\$ 76.22	\$ 647.87
EWO-041 QC walked down and verified circuits due to missing or incomplete documents from CW for panels BLP-011 and BLP-012.				
Journeyman Electrician	4	22.5	\$ 78.51	\$ 1,766.48
Helper/Apprentice	1	5.5	\$ 56.72	\$ 311.96
Journeyman Electrician	4	33.5	\$ 108.00	\$ 3,618.00
Helper/Apprentice	1	8.5	\$ 76.22	\$ 647.87
EWO-042 CW rework due to the findings of circuit discrepancies found by Zachry's engineer and ISC's fiber superintendent				
Foreman	1	2	\$ 84.40	\$ 168.80
Journeyman Electrician	2	8	\$ 78.51	\$ 628.08
Foreman	1	3	\$ 116.84	\$ 350.52
Journeyman Electrician	2	12	\$ 108.00	\$ 1,296.00
EWO-043 CW rework due to discrepancies found within panels BLP-092, BLP-082, BLP-072 by Zachry's QC during final walkdown.				
Journeyman Electrician	6	31	\$ 78.51	\$ 2,433.81
Helper/Apprentice	1	5.5	\$ 56.72	\$ 311.96
Journeyman Electrician	6	46.5	\$ 108.00	\$ 5,022.00
Helper/Apprentice	1	8.5	\$ 76.22	\$ 647.87
EWO-044 CW rework due to the findings of circuit discrepancies found by Zachry's engineer and ISC's fiber superintendent				
Foreman	1	3.5	\$ 84.40	\$ 295.40
Journeyman Electrician	2	11	\$ 78.51	\$ 863.61
Foreman	1	4.5	\$ 116.84	\$ 525.78
Journeyman Electrician	2	17	\$ 108.00	\$ 1,836.00
EWO-045 CW rework due to discrepancies found within panels BLP-042, BLP-052, BLP-062 by Zachry's QC during final walkdown				
Journeyman Electrician	4	21	\$ 78.51	\$ 1,648.71
Helper/Apprentice	1	5.5	\$ 56.72	\$ 311.96
Journeyman Electrician	4	32	\$ 108.00	\$ 3,456.00
Helper/Apprentice	1	8.5	\$ 76.22	\$ 647.87
EWO-046 CW rework due to the findings of circuit discrepancies found by Zachry's engineer and ISC's fiber superintendent				
Foreman	1	4	\$ 84.40	\$ 337.60

Journeyman Electrician		2	8	\$ 78.51	\$ 628.08
Journeyman Electrician Licensed		1	4	\$ 78.51	\$ 314.04
Foreman		1	5	\$ 116.84	\$ 584.20
Journeyman Electrician		2	10	\$ 108.00	\$ 1,080.00
Journeyman Electrician Licensed		1	5	\$ 108.00	\$ 540.00
Project Controls, Quality Control, and safety Support / Assembly Documentation					
Safety Facilitator/Technician		4	35	\$ 84.40	\$ 2,954.00
Quality Inspector		1	9	\$ 78.51	\$ 706.59
Project Control/Scheduler		1	9	\$ 84.40	\$ 759.60
Safety Facilitator/Technician		4	53	\$ 127.50	\$ 6,757.50
Quality Inspector		1	14	\$ 126.60	\$ 1,772.40
Project Control/Scheduler		1	13	\$ 217.50	\$ 2,827.50
Dedicated crew to inspect work performed by Commonwealth to					
Foreman		1	8	\$ 84.40	\$ 675.20
Journeyman Electrician		1	45	\$ 78.51	\$ 3,532.95
Foreman		1	12	\$ 116.84	\$ 1,402.08
Journeyman Electrician		1	68	\$ 108.00	\$ 7,344.00
SUBTOTAL LABOR				802.50	\$ 79,102.02

TECHNICAL AND ADMINISTRATIVE SERVICES

Description	TOTAL
Technical and Engineering Support (40% of Labor)	\$ 31,640.81
Field Construction Support (40%)	\$ 31,640.81
SUBTOTAL TECHNICAL AND ADMINISTRATIVE SERVICES	\$ 63,281.62

CONSTRUCTION MATERIAL

Material	QTY	UOM	Rate	TOTAL
Electrical material and construction consumables			\$ 6,328.16	\$ 6,328.16
SUBTOTAL CONSTRUCTION MATERIAL				\$ 6,328.16

MARKUP

Markup on Construction Material (10%)	\$ 632.82
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TOTAL	\$ 149,344.61
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EXHIBIT 3

BCN-00164

ZACHRY

FINAL BILLING PACKAGE

Project Name – Standing Bear Lake Station (SBLS) Project

Date: 10/31/2024

Extra Work Notification**To: Commonwealth Electric Company of the Midwest****Doc Control No.:** BCN - 00164**Address:** 3910 South Street, Lincoln, NE 68506**Agreement / PO No.:** 115001-605028**Attn:****Cost Code No.:****Email:****Document No.:** Multiple EWO

Zachry is hereby providing a notice of back charge pursuant of the purchase agreement between Zachry and Commonwealth Electric Company of the Midwest. Zachry is providing notice for the corrective work described below in accordance with the contract specifications. Commonwealth Electric Company of the Midwest shall sign and return acknowledging receipt of this Final Billing Package within 2 business days. Commonwealth Electric Company of the Midwest will be back-charged for the corrective work in accordance with the agreement. In addition, schedule impacts to Zachry may apply.

Description of Corrective Work & Location:

Description: Upon inspection, several problems were identified with the work carried out by Commonwealth Electric. These included the absence of floor plates in multiple areas, resulting in the need to remove and reinstall cables in accordance with site requirements. Additionally, various cables were found to be damaged, and there were issues with the formation of cables on the trays and panels, as well as multiple discrepancies in various panels upon final testing procedures.

Corrective Action: To minimize the impact on the construction schedule, ZII direct labor and subcontractor's ISC promptly addressed the identified issues by phoning, re-terminating, testing affected cables, and installing necessary missing components. For a detailed breakdown of activities, please refer to Table 1.

Continue in Page 2....**Total Estimated Extra Work Cost:****\$ 228,332.87****Zachry – Project Control Manager****Commonwealth Electric Company of the Midwest**_____
Print Name_____
Print Name_____
Signature_____
Signature_____
Date_____
Date**Return To:**

Hunter Edmondson – Project Controls Manager
6633 N 120th Street
Omaha, NE 68184
210-844-7290

CC:

Lyle Fouts – EPC Project Manager
Gil Craft – Construction Project Manager
Karen Latham – Cost Manager
Theresa Hanes – Business Manager
Travis Goodrich – Project Engineer
Michelle Stewart – Procurement Project Manager
Staci Tijerina – Accounts Payable Supervisor

Table 1

EWO Number	EWO Date	Foreman	Description of Work	Field Comments
47	10/2/2024	Craig Hazlett	CW rework due to discrepancies found upon final testing procedures conducted for turn over.	Associates were tasked with completing work on OCMA-102-CAB in the IT room of the Admin building. This included dressing CAT6 cables, routing them into cabinet OCMA-102-CAB, installing the appropriate jacks, and terminating the connections. However, final testing revealed multiple circuit failures caused by incorrectly terminated jacks on the opposite end, completed by Commonwealth. Consequently, we had to replace the jacks and pull slack from each circuit to strip and re-terminate the cables.
48	10/7/2024	Jose Regalado	CW rework due to discrepancies found within panels BLP-012, BLP-022, BLP-032 by Zachry's QC during final walkdown.	Upon final walkdown with Zachry's QC (Jaime Salinas) it was discovered that the flex pertaining to fin fan motors associated with panels BLP- 012, BLP-022 and BLP-032 was improperly installed, flex connectors were not secured correctly, flex installation was poor and not up to standard. Corrective measures were required, we began by removing fin fan flooring covers, tightened flex connectors as needed, fixed poorly installed flex, and lastly flooring was put back in place and rebolted.
49	10/7/2024	Craig Hazlett	Cw rework due to incorrect installations found associated with cabinet OCMA-001-CAB.	During a checklist walkdown in the Admin building, it was found that the circuits in the control room for cabinet OCMA-001-CAB had jacks and plugs installed incorrectly. According to drawing specification ZE114485-CMA-CSC0-0002-01, red jacks were required; however, black plugs were installed for circuits OCMA-1C0002-01-131 through OCMA-1C0002-01-152. Associates began corrective measures by removing the black plugs, restripping the Cat6 wire, installing the red jacks as specified, and performed standard testing procedures. Lastly, any labes requiring to be updated due to missing information were replaced. A total of 14 circuits were completed, the remaining circuits pending will be finished once the additional jacks are received.
50	10/8/2024	Jose Regalado	(Continued) CW rework due to discrepancies found within panels BLP-012, BLP-022, BLP-032 by Zachry's QC during final walkdown.	Per yesterday's findings, work continued in the fin fan motors associated with panels BLP- 012, BLP-022 and BLP-032 due to the findings discovered regarding the flex installations. Associates continued to through each fin fan motor, removing fin fan flooring covers, tightening flex connectors as needed, fixing poorly installed flex, and lastly rebolting flooring back in place.

51	10/8/2024	Craig Hazlett/ Jesus Cantu	CW rework due to discrepancies found on circuit 0PCA-5C0001-01-12.	During a checklist walkdown performed by ISC Fiber Superintendent in the Admin building it was discovered that, circuit 0PCA-5C0001-01-12 had been pulled with a fiber divider as opposed to the corrugated split innerduct used to segregate and protect the fiber optic cable from possible obstructions through ductbanks, cable tray, and other pathways. In addition, the fiber optic cable was found with no additional slack was available on either end, creating an issue for future reconfigurations. Thus said, a proposal was submitted describing a solution for issues regarding the insufficient amount of slack, that was later approved through a field memo, ZE-FMEM-0003331. Associates began corrective measures by pulling back slack from BOP PDC into PDC#1 ensuring that the IT room to PDC #1 had the slack required. Next, the end from Admin IT room to BOP was cut, the old cable was pulled back and replaced with a new cable to accommodate for the extra slack required. Lastly, both ends that met in the IT room were fusion spliced and tested. Through out the execution of this process associates installed existing innerduct on cable within the duct banks, under PDC'S, and added additional 40 feet of innerduct in the Admin IT room.
52	10/9/2024	Craig Hazlett	(Continued) CW rework due to incorrect installations found associated with cabinet 0CMA-001-CAB.	(Continued) Per findings discovered on 10/7, associated with cabinet 0CMA-001-CAB regarding incorrect installation of jacks and plugs. Associates continued working on the remaining cables, removing the black plugs, restripping the Cat 6 wire, installing the red jacks as specified, performing standard testing procedures and relabeling cables that were missing information.
53	10/10/2024	Jesus Cantu	CW rework due consistent electrical testing failures regarding a set of cables pertaining to VDR's	Associates were instructed to repull a set of wires previously pulled by Commonwealth (1LVB-3E0211-01-A3, 1LVB-3E0211-01-B3, 1LVB-3E0211-01-C3, and 1LVB-3E0211-01-G3) related to VDRs that were found damaged within the ductbanks. This issue was initially identified when one of the phases (1LVB-3E0211-01-C3) failed to pass electrical testing procedures. Thus said, associates ensured the new set of wires was repulled, resressed and organized within duct banks as needed. Lastly electrical testing procedures were reconducted and prepped for terminations.

54	9/25/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	A team of associates was assigned to complete outstanding work in the radiator area and to verify that previous work done by Commonwealth met the specified standards. Upon inspection, a total of 174 light fixtures were discovered with the following discrepancies, the splicing of the light fixtures was incorrect; all fixtures were wired together instead of alternating between being controlled by a switch and remaining continuously on. Additionally, the wires were not labeled for easy identification. The drains installed in conduits to prevent water accumulation were also improperly installed, with some drains placed directly underneath of the light fixtures. Water was found in multiple splice points within the conduit fittings putting the integrity of the wire at risk. The cables associated with homeruns required to power each circuit was not completed, along with their corresponding conduit. Furthermore, some switches for the fixtures were missing, while others were incorrectly positioned. Associates were instructed begin by addressing the light fixtures on circuit 9 for panel 0LVB-103-LPL in Engine Hall 3. Next, they opened each conduit fitting to clear out any accumulated debris. A series of tests were conducted to identify fixtures that did not meet the specifications outlined in the drawings. After resplicing and completing the circuit, the conduit fittings were secured, marking circuit 9 as complete. At this time the issues regarding drains was left pending, further direction is required.
55	9/26/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following yesterday's findings, work continued on the light fixtures in the radiator area associated with panel 0LVB-103-LPL in Engine Hall 3. Associates focused on circuit 9, opening each conduit fitting to clear out accumulated debris. They performed a series of tests to properly identify the wiring for fixtures that did not meet the specifications outlined in the drawings. Wires were respliced as necessary, and once completed, the conduit fittings were resecured. At this time the issues regarding drains was left pending, further direction is required.
56	9/27/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following findings discovered on 9/25, work continued on the light fixtures in the radiator area associated with panel 0LVB-103-LPL in Engine Hall 3. Associates focused on circuit 11, opening each conduit fitting to clear out accumulated debris. They performed a series of tests to properly identify the wiring for fixtures that did not meet the specifications outlined in the drawings. Wires were respliced as necessary, and once completed, the conduit fittings were resecured. Lastly, associates worked on installing the unfinished conduit designated for homeruns pertaining to panel 0LVB-103-LPL. At this time the issues regarding drains was left pending, further direction is required.
57	9/28/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following findings discovered on 9/25, work continued on the light fixtures in the radiator area associated with panel 0LVB-103-LPL in Engine Hall 3. Associates focused on circuit 10, opening each conduit fitting to clear out accumulated debris. They performed a series of tests to properly identify the wiring for fixtures that did not meet the specifications outlined in the drawings. Wires were respliced as necessary, and once completed, the conduit fittings were resecured. At this time the issues regarding drains was left pending, further direction is required.

58	9/29/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following findings discovered on 9/25, work continued on the light fixtures in the radiator area associated with panel 0LVB-102-LPL in Engine Hall 2. Associates focused on circuit 8, opening each conduit fitting to clear out accumulated debris. They performed a series of tests to properly identify the wiring for fixtures that did not meet the specifications outlined in the drawings. Wires were respliced as necessary, and once completed, the conduit fittings were resecured. At this time the issues regarding drains was left pending, further direction is required.
59	9/30/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following the findings on 9/25, work on the light fixtures in the radiator area associated with panel 0LVB-102-LPL in Engine Hall 2. While addressing circuit 9, associates encountered further issues that delayed completion. The wiring associated with the switches and light fixtures was not labeled, and they shared the same conduit. Additionally, the switch for circuit 9 was missing, but another switch was found in a different location. An RFI was submitted and approved to use the existing switch, requiring a rerouting of the wires associated with the switches. Associates then opened each conduit fitting to remove debris and conducted tests to identify the wiring for fixtures that did not meet the specifications outlined in the drawings. They isolated the wires associated with the switches, relocated them to accommodate the switch changes noted on the RFI, and respliced as necessary. Finally, the conduit fittings were resecured.
60	10/1/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	(Continued) Associates continued working on the light fixtures in the radiator area associated with panel 0LVB-102-LPL circuit 9 in Engine Hall 2. Opening each conduit fitting to remove any accumulated debris and conducted tests to identify the wiring for fixtures that did not meet the specifications outlined in the drawings. They isolated the wires associated with the switches, relocated them to accommodate the switch changes noted on the RFI, and respliced as necessary. Finally, the conduit fittings were resecured.
61	10/2/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following findings discovered on 9/25, work continued on the light fixtures in the radiator area associated with panel 0LVB-101-LPL in Engine Hall 1. Associates focused on circuit 8, opening each conduit fitting to clear out accumulated debris. They performed a series of tests to properly identify the wiring for fixtures that did not meet the specifications outlined in the drawings. Wires were respliced as necessary, and once completed, the conduit fittings were resecured. At this time the issues regarding the drains was left pending, further direction is required.
62	10/3/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	Following findings discovered on 9/25, work continued on the light fixtures in the radiator area associated with panel 0LVB-101-LPL in Engine Hall 1. Associates focused on circuit 9, opening each conduit fitting to clear out accumulated debris. They performed a series of tests to properly identify the wiring for fixtures that did not meet the specifications outlined in the drawings. Wires were respliced as necessary, and once completed, the conduit fittings were resecured. Lastly, associates worked on installing the unfinished conduit designated for homeruns pertaining to panel 0LVB-101-LPL. At this time the issues regarding the drains was left pending, further direction is required.

63	10/4/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to receptacles.	As previously mentioned on 9/25, a team of associates was assigned to complete outstanding work in the radiator area and verify that previous work done by Commonwealth met specified standards. After completing work regarding discrepancies found all light fixtures and switches, associates moved on to the GFCI receptacles associated with panel 0LVA-15-LPL at total of 15 were discovered. They began by inspecting all receptacles, ensuring that all receptacles were installed per the drawings. Each receptacle was then opened to ensure proper wire connections and secure tightening before closing them up again for testing. All receptacles passed except for 0LVA-015-LPL CKT 16, which was found to be missing its corresponding homerun. Further action is needed to address this issue.
64	10/5/2024	Craig Guilbeau	CW rework due to discrepancies found in CTO: LCC-01 pertaining to receptacles.	(Continued)Following yesterday's findings regarding receptacle 0LVA-15-LPL-16, associates took corrective measures by pulling the missing cable designated as the homerun for circuit 16. Once the cable was in place, they spliced the wires as needed, connected and secured the receptacle, and conducted tests to ensure it was functioning properly. All tests confirmed that the receptacle was now operational.
65	10/7/2024	Craig Guilbeau/Jesus Cantu	CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.	As previously mentioned on 9/25, the cables associated with the homeruns needed to power the light fixtures were incomplete or pending. Associates focused on pulling the circuits for 0LVB-103-LPL-9, 0LVB-103-LPL-10, 0LVB-103-LPL-11, 0LVB-103-LPL-8, 0LVB-102-LPL-8, 0LVB-101-LPL-8, and 0LVB-101-LPL-9. Once the cables were pulled, they proceeded to splice as necessary and conducted tests to ensure that the sequence of the fixtures met the specifications outlined in the drawings. All tests confirmed compliance with the required standards.

The attached cost include all the required labor hours and material costs to complete the corrective work. If Commonwealth Electric Company of the Midwest is in agreement with the terms detailed herein, please sign and return this Final Billing Package to Zachry to confirm acceptance.

Cost Summary

OTHER FACTORS	
Is the Work Elevated In the rack ? Y or N	Yes
Does the work require Scaffold ? Y or N	No
Does the work require Warehouse Support ? Y or N	Yes
Is the Rework in place (designed location) ? Y or N	Yes
Is Additional NDE Required ? Y or N	No
Is Turnover / Closeout Required (ITR) ? Y or N	Yes
Is additional Logistics Required ? Y or N	No
Is 3rd Party Sub Needed ? Y or N	Yes
Is there a delay due to Dewatering ? Y or N	No
Is LOTO required ? Y or N	Yes

LABOR:

		Man Power	Hours	Rate	TOTAL
EWO-047 CW rework due to discrepancies found upon final testing procedures conducted for turn over.					
Foreman		1	3	\$ 84.40	\$ 253.20
Journeyman Electrician		2	6	\$ 78.51	\$ 471.06
Journeyman Electrician Licensed		1	3	\$ 78.51	\$ 235.53
Foreman		1	5	\$ 116.84	\$ 584.20
Journeyman Electrician		2	10	\$ 108.00	\$ 1,080.00
Journeyman Electrician Licensed		1	5	\$ 108.00	\$ 540.00
EWO-048 CW rework due to discrepancies found within panels BLP-012, BLP-022, BLP-032 by Zachry's QC during final walkdown.					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		3	12	\$ 78.51	\$ 942.12
Helper/Apprentice		1	4	\$ 56.72	\$ 226.88
Foreman		1	3	\$ 116.84	\$ 350.52
Journeyman Electrician		3	18	\$ 108.00	\$ 1,944.00
Helper/Apprentice		1	6	\$ 76.22	\$ 457.32
EWO-049 CW rework due to incorrect installations found associated with cabinet OCMA-001-CAB.					
Foreman		1	5	\$ 84.40	\$ 422.00
Journeyman Electrician		1	4	\$ 78.51	\$ 314.04
Journeyman Electrician Licensed		1	4	\$ 78.51	\$ 314.04
Foreman		1	6	\$ 116.84	\$ 701.04
Journeyman Electrician		1	6	\$ 108.00	\$ 648.00
Journeyman Electrician Licensed		1	6	\$ 108.00	\$ 648.00
EWO-050 CW rework due to discrepancies found within panels BLP-012, BLP-022, BLP-032 by Zachry's QC during final walkdown.					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		2	6.5	\$ 78.51	\$ 510.32
Helper/Apprentice		1	4	\$ 56.72	\$ 226.88
Foreman		1	3	\$ 116.84	\$ 350.52
Journeyman Electrician		2	10	\$ 108.00	\$ 1,080.00
Helper/Apprentice		1	6	\$ 76.22	\$ 457.32
EWO-051 CW rework due to discrepancies found on circuit OPCA-5C0001-01-12.					
Foreman		2	7.5	\$ 84.40	\$ 633.00
Journeyman Electrician		3	8	\$ 78.51	\$ 628.08
Journeyman Electrician Licensed		1	4	\$ 78.51	\$ 314.04
Helper/Apprentice		3	6	\$ 56.72	\$ 340.32
Foreman		2	12	\$ 116.84	\$ 1,402.08
Journeyman Electrician		3	12	\$ 108.00	\$ 1,296.00
Journeyman Electrician Licensed		1	6	\$ 108.00	\$ 648.00
Helper/Apprentice		3	9	\$ 76.22	\$ 685.98
EWO-052 CW rework due to incorrect installations found associated with cabinet OCMA-001-CAB.					
Foreman		1	2.5	\$ 84.40	\$ 211.00
Journeyman Electrician		1	2	\$ 78.51	\$ 157.02
Journeyman Electrician Licensed		1	2	\$ 78.51	\$ 157.02
Foreman		1	3.5	\$ 116.84	\$ 408.94
Journeyman Electrician		1	3	\$ 108.00	\$ 324.00
Journeyman Electrician Licensed		1	3	\$ 108.00	\$ 324.00
EWO-053 CW rework due consistent electrical testing failures regarding a set of cables pertaining to VDR's					
Foreman		1	5	\$ 84.40	\$ 422.00

Journeyman Electrician		6	24	\$ 78.51	\$ 1,884.24
Helper/Apprentice		7	28	\$ 56.72	\$ 1,588.16
Foreman		1	6	\$ 116.84	\$ 701.04
Journeyman Electrician		6	36	\$ 108.00	\$ 3,888.00
Helper/Apprentice		7	42	\$ 76.22	\$ 3,201.24
EWO-054 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	1	\$ 84.40	\$ 84.40
Journeyman Electrician		2	9	\$ 78.51	\$ 706.59
Foreman		1	2	\$ 116.84	\$ 233.68
Journeyman Electrician		2	15	\$ 108.00	\$ 1,620.00
EWO-055 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician		3	12	\$ 78.51	\$ 942.12
Foreman		1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician		3	18	\$ 108.00	\$ 1,944.00
EWO-056 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	3	\$ 84.40	\$ 253.20
Journeyman Electrician		6	12	\$ 78.51	\$ 942.12
Helper/Apprentice		1	3	\$ 56.72	\$ 170.16
Foreman		1	4	\$ 116.84	\$ 467.36
Journeyman Electrician		6	19	\$ 108.00	\$ 2,052.00
Helper/Apprentice		1	4	\$ 76.22	\$ 304.88
EWO-057 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	1	\$ 84.40	\$ 84.40
Journeyman Electrician		2	8	\$ 78.51	\$ 628.08
Foreman		1		\$ 116.84	\$ -
Journeyman Electrician		2	12	\$ 108.00	\$ 1,296.00
EWO-058 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician		3	9.5	\$ 78.51	\$ 745.85
Foreman		1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician		3	14.5	\$ 108.00	\$ 1,566.00
EWO-059 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician		3	14.5	\$ 78.51	\$ 1,138.40
Foreman		1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician		3	21.5	\$ 108.00	\$ 2,322.00
EWO-060 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		2	7	\$ 78.51	\$ 549.57
Foreman		1	3	\$ 116.84	\$ 350.52
Journeyman Electrician		2	10	\$ 108.00	\$ 1,080.00
EWO-061 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	3	\$ 84.40	\$ 253.20
Journeyman Electrician		4	16	\$ 78.51	\$ 1,256.16
Foreman		1	5	\$ 116.84	\$ 584.20
Journeyman Electrician		4	24	\$ 108.00	\$ 2,592.00
EWO-062 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		1	1.5	\$ 84.40	\$ 126.60
Journeyman Electrician		3	12	\$ 78.51	\$ 942.12
Foreman		1	2.5	\$ 116.84	\$ 292.10
Journeyman Electrician		3	18	\$ 108.00	\$ 1,944.00
EWO-063 CW rework due to discrepancies found in CTO: LCC-01 pertaining to receptacles.					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		3	12	\$ 78.51	\$ 942.12
Foreman		1	4	\$ 116.84	\$ 467.36
Journeyman Electrician		3	18	\$ 108.00	\$ 1,944.00
EWO-064 CW rework due to discrepancies found in CTO: LCC-01 pertaining to receptacles.					
Foreman		1	2	\$ 84.40	\$ 168.80
Journeyman Electrician		2	8	\$ 78.51	\$ 628.08
Helper/Apprentice		1	4	\$ 56.72	\$ 226.88
Foreman		1	3	\$ 116.84	\$ 350.52
Journeyman Electrician		2	12	\$ 108.00	\$ 1,296.00
Helper/Apprentice		1	6	\$ 76.22	\$ 457.32

EWO-065 CW rework due to discrepancies found in CTO: LCC-01 pertaining to light fixtures.					
Foreman		2	5.5	\$ 84.40	\$ 464.20
Journeyman Electrician		5	16.5	\$ 78.51	\$ 1,295.42
Helper/Apprentice		4	10.5	\$ 56.72	\$ 595.56
Foreman		1	8.5	\$ 116.84	\$ 993.14
Journeyman Electrician		5	24.5	\$ 108.00	\$ 2,646.00
Helper/Apprentice		4	15.5	\$ 76.22	\$ 1,181.41
Project Controls, Quality Control, and safety Support / Assembly Documentation					
Safety Facilitator/Technician		4	57	\$ 84.40	\$ 4,810.80
Quality Inspector		1	14	\$ 78.51	\$ 1,099.14
Project Control/Scheduler		1	14	\$ 84.40	\$ 1,181.60
Safety Facilitator/Technician		4	85	\$ 127.50	\$ 10,837.50
Quality Inspector		1	21.5	\$ 126.60	\$ 2,721.90
Project Control/Scheduler		1	21.5	\$ 217.50	\$ 4,676.25
Dedicated crew to inspect work performed by Commonwealth to					
Foreman		1	8	\$ 84.40	\$ 675.20
Journeyman Electrician		1	76	\$ 78.51	\$ 5,966.76
Foreman		1	13	\$ 116.84	\$ 1,518.92
Journeyman Electrician		1	115	\$ 108.00	\$ 12,420.00
SUBTOTAL LABOR			1,237.00	\$	120,939.02

TECHNICAL AND ADMINISTRATIVE SERVICES

Description	TOTAL
Technical and Engineering Support (40% of Labor)	\$ 48,375.61
Field Construction Support (40%)	\$ 48,375.61
SUBTOTAL TECHNICAL AND ADMINISTRATIVE SERVICES	\$ 96,751.22

CONSTRUCTION MATERIAL

Material	QTY	UOM	Rate	TOTAL
Electrical material and construction consumables			\$ 9,675.12	\$ 9,675.12
SUBTOTAL CONSTRUCTION MATERIAL				\$ 9,675.12

MARKUP

Markup on Construction Material (10%)	\$ 967.51
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TOTAL	\$ 228,332.87
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EXHIBIT 4

BCN-00165

ZACHRY

FINAL BILLING PACKAGE

Project Name – Standing Bear Lake Station (SBLS) Project

Date: 01/31/2025

Extra Work Notification**To: Commonwealth Electric Company of the Midwest****Doc Control No.:** BCN-00165**Address:** 3910 South Street, Lincoln, NE 68506**Agreement / PO No.:** 115001-605028**Attn:****Cost Code No.:****Email:****Document No.:** Multiple EWO

Zachry is hereby providing a notice of back charge pursuant of the purchase agreement between Zachry and Commonwealth Electric Company of the Midwest. Zachry is providing notice for the corrective work described below in accordance with the contract specifications. Commonwealth Electric Company of the Midwest shall sign and return acknowledging receipt of this Final Billing Package within 2 business days. Commonwealth Electric Company of the Midwest will be back-charged for the corrective work in accordance with the agreement. In addition, schedule impacts to Zachry may apply.

Description of Corrective Work & Location:

Description: Upon inspection, several issues were identified with the work performed by Commonwealth Electric. These issues included circuits not meeting the required standards, readings not aligning with vendor specifications, unacceptable heat trace readings, improperly completed terminations, circuits tripping, and failure to pass the resistance test.

Corrective Action: To minimize the impact on the construction schedule, ZII direct labor and subcontractor's ISC promptly addressed the identified issues by phoning, re-terminating, testing affected cables, and installing necessary missing components. For a detailed breakdown of activities, please refer to Table 1.

Continue in Page 2....**Total Estimated Extra Work Cost:****\$108,028.30****Zachry – Project Control Manager****Commonwealth Electric Company of the Midwest**_____
Print Name_____
Print Name_____
Signature_____
Signature_____
Date_____
Date**Return To:**

Hunter Edmondson – Project Controls Manager
6633 N 120th Street
Omaha, NE 68184
210-844-7290

CC:

Lyle Fouts – EPC Project Manager
Gil Craft – Construction Project Manager
Karen Latham – Cost Manager
Theresa Hanes – Business Manager
Travis Goodrich – Project Engineer
Michelle Stewart – Procurement Project Manager
Staci Tijerina – Accounts Payable Supervisor

Table 1

EWO #	EWO Date	Foreman	Description of Work	Field Comments
66	11/14/24	Rolando Alor	CW rework due to consistent electrical testing failures regarding a set of cables.	Associates started working the heat trace system of 0LVC-001 PL located in the BOP PDC Building, which were installed by Common Wealth. We assisted The Vendor Specialist for NVENT by helping him with his task of programming the circuits (CKT- 35,38,10,19,22) of 0LVC-001-PL. After energizing the panel, and going through each individual circuit, we verified each circuit with a resistance test of 2.5k volts, per vendor standards. While performing the resistance test on the circuits we came across various circuits that were not meeting the necessary standards or readings of those cables. We then proceeded to de-terminate and isolate the circuits that weren't meeting our standards. While trouble shooting, we suspected errors in the terminations of the heat trace cable. After doing the terminations the correct way, the cables were re-terminated to avoid voltage leaks in those circuits.
67	11/15/24	Rolando Alor	CW rework due to consistent electrical testing failures regarding a set of cables in 0LVC-002-PL.	The Heat trace specialist for NVENT verified the heat trace system. We proceeded to work on 0LVC-001-PL. Prior to the programming and energization of the panel, we began verifying each individual circuits (CKT-11,12,4), by de-terminating the circuits and performing resistance tests on the heat trace circuits at 2.5k volts per vendor standards. While performing these resistance tests on both ends of the circuits, we came across terminations done by Common wealth that were done incorrectly. We found many circuits were not meeting the vendors standards.
68	11/16/24	Rolando Alor	CW Rework and Trouble Shoot Heat Trace Circuits (CKT- 9,11,20, and 7).	Associates verified the Heat Trace System 0LVC-002-PL located in the LFO Building by De-Terminating the circuits (CKT-9,11,20, and 7) to perform various resistance tests at 2.5k volts per vendor standard. Upon performing these tests circuits 9,11,20, and 7, were not giving acceptable readings. We then proceeded to identify the problem that was causing these circuits to fall short of the vendor's standards, by checking their terminations in both the junction boxes, and the lights. After having removed the junction boxes, the lights, and the cable the associates installed new cable, new lights, and new junction boxes. Once the terminations were done, we proceeded to perform the required resistance test, which then met the vendors standards.

69	11/17/24	Rolando Alor	CW Rework and Trouble Shoot Heat Trace Circuits (CKT- 9,11,20, and 7)	Associates continued verifying the circuits (CKT-10 and 22) belonging to 0LVC-001-PL located in the BOP PDC. A number of circuits were not passing the resistance test at 2.5k volts per vendor standards. After locating the termination points of these circuits, we discovered that the terminations were not done properly. Once the terminations were located and disconnected, we began to re-terminate lights, splice points, and junction boxes the correct way per vendor's standards and perform additional resistance tests at 2.5k volts where the circuits finally gave us the readings that were required for the cables to pass the vendors standards.
70	11/21/24	Rolando Alor	Trouble Shoot Heat Trace (0LVC-001)	Associates continued verifying the circuits (CKT- 1,9,14, and 16) of the heat trace cables belonging to 0LVC-001-PL located in the BOP PDC, various circuits were not meeting the vendor standards of the resistance test, which was performed at 2.5K volts. The circuits that were not passing were CKT- 1, 9,14, and 16. After discovering these issues we began to trouble shoot the process. First, we isolated each individual circuit and performed one more the resistance test. After double checking that the circuits were indeed failing, we began our search for the issues in the field. We started by identifying and verifying the condition of the power cables coming from 0LVC-001-PL as well as any splices that had been done to the circuits. We also checked the phasing of the splices. After verifying that all power cables and splices were working properly, we began searching the junction boxes and lights for any signs of bad terminations or damaged cables. We came across a couple of terminations that had been done incorrectly on CKT-14 and 16. We decided to try and get slack from the cable, just enough to do the termination one more before choosing to remove the insulation to inspect the cable. After re-doing the termination, we performed one more resistance test and we were able to get circuits 14 and 16 working.
71	12/6/24		Verifying Circuits to 0LVC-001-PL in BOP PDC	While verifying the circuits belonging to 0LVC-001-PL in the BOP PDC, we found two circuits that kept tripping. We began by isolating the circuits from the panel and using a fox and hound to tone and trace the cables. After locating both ends, we phoned out each cable to further identify both ends. We then performed various resistance tests on the main power cable, as well as the jumpers belonging to the same circuits to verify the integrity of the cables. After that we started checking the terminations of the heat trace cable and putting it through the resistance tests at 2.5k volts per vendor standards. The cables did not pass the resistance test, therefore we decided to re-do the terminations to both, the lights as well as the junction boxes. Once completed, we performed another resistance test at 2.k volts and received the results needed in Circuit 9. Circuit 1 that was tripping inside of the panel is still under investigation and we are eliminating possibilities

72	12/6/24		De-term and Demo Circuit (0LVC-002-PL)	<p>While verifying the Heat Trace circuits of (0LVC-002-PL) located in the Liquid Fuel Building, we found a number of circuits that were originally installed by Common Wealth, that were not passing the resistance test which was performed at 2.5K volts. Once verifying which circuits did not pass the resistance test we then searched the field and discovered that all of the conduit and fittings were run beneath the grating. We then proceeded to get a confined space permit to be able to access the fittings and to check for any failing or incorrectly splice. After receiving our permits entering the space underneath the grating, we opened up the fittings and saw that the conduit was filled with mud and water that had also entered the wire nuts. After discovering the problem, we then decided to demo all of the conduit and re-run the conduit in a different path to prevent the same issues from happening again in the future.</p>
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The attached cost include all the required labor hours and material costs to complete the corrective work. If Commonwealth Electric Company of the Midwest is in agreement with the terms detailed herein, please sign and return this Final Billing Package to Zachry to confirm acceptance.

Cost Summary

OTHER FACTORS	
Is the Work Elevated In the rack ? Y or N	Yes
Does the work require Scaffold ? Y or N	Yes
Does the work require Warehouse Support ? Y or N	Yes
Is the Rework in place (designed location) ? Y or N	Yes
Is Additional NDE Required ? Y or N	No
Is Turnover / Closeout Required (ITR) ? Y or N	Yes
Is additional Logistics Required ? Y or N	No
Is 3rd Party Sub Needed ? Y or N	Yes
Is there a delay due to Dewatering ? Y or N	No
Is LOTO required ? Y or N	Yes

3rd PARTY LABOR:

		Man Power	Hours	Hours*Man Power	Rate	TOTAL
EWO-066 CW rework due to consistent electrical testing failures regarding a set of cables.						
Foreman		1	8	8	\$ 84.40	\$ 675.20
Journeyman Electrician		4	8	32	\$ 78.51	\$ 2,512.32
Helper/Apprentice		3	8	24	\$ 56.72	\$ 1,361.28
Foreman		1	5	5	\$ 116.84	\$ 584.20
Journeyman Electrician		4	4	16	\$ 108.00	\$ 1,728.00
Helper/Apprentice		3	4	12	\$ 76.22	\$ 914.64
		EWO-066	Total Hours	97		
EWO-067 CW rework due to consistent electrical testing failures regarding a set of cables in OLVC-002-PL.						
Foreman		1	8	8	\$ 84.40	\$ 675.20
Journeyman Electrician		4	8	32	\$ 78.51	\$ 2,512.32
Helper/Apprentice		3	8	24	\$ 56.72	\$ 1,361.28
Foreman		1	5	5	\$ 116.84	\$ 584.20
Journeyman Electrician		4	4	16	\$ 108.00	\$ 1,728.00
Helper/Apprentice		3	4	12	\$ 76.22	\$ 914.64
		EWO-067	Total Hours	97		
EWO-068 CW Rework and Trouble Shoot Heat Trace Circuits (CKT- 9,11,20, and 7)						
Foreman		1	8	8	\$ 84.40	\$ 675.20
Journeyman Electrician		3	8	24	\$ 78.51	\$ 1,884.24
Journeyman Electrician		1	6	6	\$ 78.51	\$ 471.06
Helper/Apprentice		3	8	24	\$ 56.72	\$ 1,361.28
Foreman		1	5	5	\$ 116.84	\$ 584.20
Journeyman Electrician		3	4	12	\$ 108.00	\$ 1,296.00
Helper/Apprentice		3	4	12	\$ 76.22	\$ 914.64
		EWO-068	Total Hours	91		
EWO-069 CW Rework and Trouble Shoot Heat Trace Circuits (CKT- 9,11,20, and 7)						
Foreman		1	8	8	\$ 84.40	\$ 675.20
Journeyman Electrician		3	8	24	\$ 78.51	\$ 1,884.24
Journeyman Electrician		1	6	6	\$ 78.51	\$ 471.06
Helper/Apprentice		3	8	24	\$ 56.72	\$ 1,361.28
Foreman		1	1	1	\$ 116.84	\$ 116.84
		EWO-069	Total Hours	63		
EWO-070 Trouble Shoot Heat Trace (OLVC-001)						
Foreman		1	8	8	\$ 84.40	\$ 675.20
Journeyman Electrician		4	8	32	\$ 78.51	\$ 2,512.32
Helper/Apprentice		3	8	24	\$ 56.72	\$ 1,361.28
Foreman		1	5	5	\$ 116.84	\$ 584.20
Journeyman Electrician		4	4	16	\$ 108.00	\$ 1,728.00
Helper/Apprentice		3	4	12	\$ 76.22	\$ 914.64
		EWO-070	Total Hours	97		
EWO-071 Verifying Circuits to OLVC-001-PL in BOP PDC						
Journeyman Electrician		1	8	8	\$ 78.51	\$ 628.08
Helper/Apprentice		1	8	8	\$ 56.72	\$ 453.76
Journeyman Electrician		1	4	4	\$ 108.00	\$ 432.00
Helper/Apprentice		1	4	4	\$ 76.22	\$ 304.88
		EWO-071	Total Hours	24		
EWO-072 De-term and Demo Circuit						
Journeyman Electrician		1	8	8	\$ 78.51	\$ 628.08
Helper/Apprentice		1	8	8	\$ 56.72	\$ 453.76
Journeyman Electrician		1	4	4	\$ 108.00	\$ 432.00
Helper/Apprentice		1	4	4	\$ 76.22	\$ 304.88
		EWO-072	Total Hours	24		
Project Controls, Quality Control, and safety Support / Assembly Documentation						
Safety Facilitator/Technician		4	16	64	\$ 84.40	\$ 5,401.60

Quality Inspector		1	16	16	\$ 78.51	\$ 1,256.16
Project Control/Scheduler		1	16	16	\$ 84.40	\$ 1,350.40
Safety Facilitator/Technician		4	5	20	\$ 127.50	\$ 2,550.00
Quality Inspector		1	4.5	4.5	\$ 126.60	\$ 569.70
Project Control/Scheduler		1	4	4	\$ 217.50	\$ 870.00
		Indirect	Total Hours	124.5		
		Direct and Indirect Subtotal Hours		617.5		
Dedicated crew to inspect work performed by Commonwealth to						
Foreman		1	8	8	\$ 84.40	\$ 675.20
Journeyman Electrician		1	36	36	\$ 78.51	\$ 2,826.36
Foreman		1	4	4	\$ 116.84	\$ 467.36
Journeyman Electrician		1	24	24	\$ 108.00	\$ 2,592.00
		Crew Total Hours		72		
SUBTOTAL LABOR		Subtotal Hours		689.50	\$	57,218.38

3RD PARTY TECHNICAL AND FIELD SERVICES

Description	TOTAL
Technical and Engineering Support (40% of Labor)	\$ 22,887.35
Field Construction Support (40%)	\$ 22,887.35
SUBTOTAL 3RD PARTY TECHNICAL AND FIELD SERVICES	\$ 45,774.70

3RD PARTY CONSTRUCTION MATERIAL

Material	QTY	UOM	Rate	TOTAL
Electrical material and construction consumables			\$ 4,577.47	\$ 4,577.47
SUBTOTAL 3RD PARTY CONSTRUCTION MATERIAL				\$ 4,577.47

MARKUP

Markup on 3rd Party Construction Material (10%)	\$ 457.75
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TOTAL	\$ 108,028.30
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EXHIBIT 5

Redundant Cable Pull Impact

Linear Feet of Cable Progressed	1,526,347
Percent of Cable in Commonwealth's Scope of Work	25%
Linear Feet in Commonwealth's Scope of Work	381,587
Percent Cable Double Pulled	10%
Linear Feet of Cable Double Pulled	38,159
Pull Rate for all cables (Linear Feet pulled per hour)	0.17
Hours for Double Pulling Cables	6,502
Average Billing Rate (ISC/Commonwealth)	\$80
Total 3rd Party Labor (ISC/Commonwealth) Cost of Double Pulled Cable	\$520,182
Zachry 3rd Party Labor (ISC) Markup (20%)	\$104,036
Total Labor Cost for Double Pulling Cables	\$624,218

Percent Cable Double Pulled	10%
Linear Feet of Cable Double Pulled	38,159
Average Cost of Cable per Linear Feet	\$6.00
Total Material Cost of Double Pulled Cable	\$228,952.05
Material Markup (10%)	\$22,895.21
Total Material Cost with Material Markup	\$251,847.26

Total Cost of Double Pulling Cable	\$876,065.66
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EXHIBIT 6

Scaffold Erection and Rental Cost Breakdown

BCN Rework Hours	
Zachry Change Management has initial BCN-00127 (ISC EWO 001-037)	2,813
Zachry Change Management has initial BCN-00163 (ISC EWO 038-046)	803
Zachry Change Management has initial BCN-00164 (ISC EWO 047-065)	1,237
Zachry Change Management has initial BCN-00166 (ISC EWO 066-072)	690
Total Rework Hours	5,543

Scaffold Rental	
Hours Worked per Day	12
Number of Workers per Day	8
Total Rework Hours from BCNs	5,543
Scaffold Installation and Removal Allowance (20%)	1109
Average Labor Billing	\$156
Total Labor Cost of Scaffold Erection	\$172,942

Days Scaffold was required to complete Work	57.74
Days where Scaffold was erected but not used (weekends, rainouts, etc.)	11.55
Total Number of Days Scaffold Rental	69.29
Daily Scaffold Rental Rate	\$300
3rd Party Total Material Cost of Scaffold Rental	\$20,786
3rd Party Material Mark-up (10%)	\$2,079
Total Material Cost and Mark-up	\$22,865

Total Scaffold Cost with Markup	\$195,806
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EXHIBIT 7

Additional Material for Defective Work

Linear Feet of Cable	25,000
Cost per Linear Feet	\$6.00
Total Cost of Cable	\$150,000.00

Linear Feet Conduit/Cable Tray	3,500
Cost per Linear Feet	\$3.50
Total Cost of Conduit/Cable Tray	\$12,250.00

Terminations	1,200
Cost per Termination	\$3.50
Total Cost of Terminations	\$4,200.00

Total Material Cost without Material Markup	\$166,450.00
Material Markup (10%)	\$16,645.00
Total Material Cost with Material Markup	\$183,095.00

EXHIBIT 8

Back Charges and Other Costs Impact

Lost work hours for smoke breaks on a Tobacco free jobsite	500
Base Billing Rate	\$80
Total Cost of Smoke Breaks	\$40,000

Additional Zachry Indirect Hours to Effect Takeover and Complete Defective Work*	2,000
Uncaptured 3rd Party Labor Hours on MISC. Defective Work	500
Total Hours	2,500
Zachry Labor Rate	\$150
3rd Party Labor Billing Rate	\$80
Total Cost of General Items	\$340,000
Zachry 3rd Party Labor Markup (20%)	\$8,000
Total Cost of General Items with Markup	\$348,000

Total Miscellaneous Costs	\$388,000
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Zachry Change Management has initial BCN-00127 (ISC EWO 001-037)	\$523,309
Zachry Change Management has initial BCN-00163 (ISC EWO 038-046)	\$149,345
Zachry Change Management has initial BCN-00164 (ISC EWO 047-065)	\$228,333
Zachry Change Management has initial BCN-00165 (ISC EWO 066-072)	\$108,028
Total BCN Cost to Zachry	\$1,009,015

Total Miscellaneous and BCN Cost	\$1,397,015
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*Procurement/Procurement/CoConsule/Meetings/Punchlist

EXHIBIT 9

Schedule Impact Cost Breakdown (Unclaimed)

Cost of LDs per Day	\$350,000
Hours worked per day	14
Manpower per day	40

Hours from BCNs	5,543
Hours from Zachry to Investigate and uncaptured hours from ISC	2,500
Total Hours of rework	8,043

Equivalent Impact Days (rounded up)	15
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Total Cost of Impact Days	\$5,250,000
Commonwealth's Portion of Impact (40%)	\$2,100,000

EXHIBIT 10

Zachry's Cost Impact from Commonwealth Summary

Schedule Impact Cost Breakdown (Unclaimed)	\$2,100,000
Scaffold Erection and Rental Cost	\$195,806
Multiple Cable Pull Install Cost	\$876,066
Additional Material Cost	\$183,095
Back Charges and Other Costs	\$1,397,015
Total Cost Impact to Zachry	\$2,651,982

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

ZACHRY HOLDINGS, INC., <i>et al.</i>	)	CASE NO. 24-90377 (MI)
)	
DEBTORS	)	CHAPTER 11
)	
	)	(Jointly Administered)
)	

**ORDER GRANTING COMMONWEALTH ELECTRIC COMPANY OF THE
MIDWEST’S MOTION FOR SUMMARY JUDGMENT AND
OVERRULING DEBTORS’ OBJECTION TO THE CLAIM OF
COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST [CLAIM NO. 1003]
[RELATED TO ECF 2336]**

CAME ON FOR CONSIDERATION Creditor Commonwealth Electric Company of the Midwest’s (“CECM”) Motion for Summary Judgment with respect to the Debtors’ Objection (ECF 2336) to the Claim of CECM [Claim No. 1003] (the “Motion”), and after reviewing the Motion and any responses thereto, and having considered the evidence presented in support of the Motion, the Motion is **GRANTED**, and it is hereby **ORDERED, ADJUDGED, AND DECREED THAT:**

1. There is no genuine dispute as to the following material facts: (1) Zachry Industrial Inc. (“Zachry”) terminated the relevant Services Agreement for convenience under section 16.2, preventing CECM from completing any of its work in progress; (2) Zachry did not provide written notice to CECM of any alleged defective work; and (3) Zachry did not give CECM an opportunity to inspect and correct any alleged defective work following Zachry’s termination of the Service Agreement for convenience.

2. Further, the provisions of the Service Agreement relied on by Zachry in the Objection to Claim did not survive Zachry’s termination of the Service Agreement. Accordingly,

as a matter of law Zachry is precluded from asserting an offset or backcharge to reduce the amount owed to CECM under the Service Agreement.

3. CECM is entitled to an order overruling Debtor's Objection to the Claim of CECM [Claim No. 1003] (Doc. 2336) as to Zachry's request to reduce the amount of the Claim.

4. Claim No. 1003 for pre-petition amounts owed to CECM shall hereby be allowed in an amount equal to \$5,359,030.62 (the "Allowed Claim").

5. \$110,275.93 of the Allowed Claim shall be entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code.¹

SIGNED:

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

¹ This Order does not address CECM's pursuit of post-petition amounts it alleges is owed by the Debtors to CECM, including the principal amount owed of \$219,907.00 for post-petition services and materials provided at the request of the Debtors. All parties reserve their respective claims and defenses with regard to pursuit of post-petition amounts.