

**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)
)	

**ORDER AUTHORIZING THE RETENTION
AND EMPLOYMENT OF LAZARD FRÉRES & CO.
LLC AS INVESTMENT BANKER FOR THE DEBTORS**

Upon the application (the “**Application**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), authorizing the retention and employment of Lazard Frères & Co. LLC (“**Lazard**”) effective as of the Engagement Execution Date, to provide the Services described therein in accordance with the terms and conditions set forth in the Engagement Letter attached as **Exhibit 1**, all as more fully set forth in the Application; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and due, sufficient, and proper notice of the Application having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and upon consideration of the Application, the Meghji Declaration, the New Declaration, and all proceedings had before the

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

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



249037724101000000000018

Court; and this Court having found and determined that Lazard is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code, and does not hold or represent any interest materially adverse to the Debtors’ estates with respect to the matters upon which it is to be employed, that Lazard’s employment is necessary and in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and this Court having found that the Debtors’ notice of the Application and an opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in support of the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized, pursuant to sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Bankruptcy Local Rules 2014-1 and 2016-1, to employ and retain Lazard as their investment banker in accordance with the terms and conditions set forth in the Engagement Letter, as modified by this Order, effective as of the Engagement Execution Date and to pay fees and reimburse expenses to Lazard on the terms and at the times specified in the Engagement Letter, as limited or modified by this Order.

2. The provisions set forth in the Engagement Letter and the Indemnification Letter are approved in all respects except as limited or modified by this Order.

3. The terms of Lazard’s compensation set forth in the Engagement Letter and the Indemnification Letter, as modified by this Order, including, without limitation, the fees and expenses and the indemnification, contribution, and related obligations are approved pursuant to

section 328(a) of the Bankruptcy Code, and Lazard shall be compensated, reimbursed, and indemnified pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of, and at the times specified in, the Engagement Letter and the Indemnification Letter, as modified by this Order, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures (except as otherwise set forth herein), and any other applicable orders of this Court.

4. None of the fees payable to Lazard shall constitute a “bonus” or fee enhancement under applicable law.

5. Notwithstanding anything to the contrary in the Application, Engagement Letter, or the New Declaration, to the extent the Debtors wish to expand the scope of Lazard’s services beyond those services set forth in the Application, Engagement Letter, or the New Declaration, such other services shall be subject to separate application and approval by Court order.

6. Lazard shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable orders of this Court; *provided* that Lazard shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code, and Lazard’s fees and expenses shall not be subject to review under the standard set forth in section 330 of the Bankruptcy Code.

7. Notwithstanding any provision to the contrary in this Order, the Application, or the Engagement Letter, the U.S. Trustee shall have the right to object to Lazard’s request(s) for interim and final applications for compensation based on the standard provided in section 330 of the Bankruptcy Code. This Order and the record relating to the Court’s consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the

reasonableness of Lazard's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Lazard's fees.

8. Lazard shall include in its monthly, interim, and final fee applications, among other things, reasonably detailed time records setting forth, in a summary format by project category, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in half-hour (0.5) increments, but Lazard shall be excused from keeping time in tenth-hour (0.1) increments.

9. Notwithstanding anything to the contrary in the Application, the Engagement Letter, or the New Declaration, to the extent that Lazard uses the services of independent or third-party contractors or subcontractors (the "**Contractors**") in these cases and Lazard seeks to pass through the fees and/or costs of the Contractors to the Debtors, Lazard shall (a) pass through the fees of such Contractors to the Debtors at the same rate that Lazard pays such Contractors; and (b) seek reimbursement for actual costs of the Contractors only. In addition, the Debtors shall ensure that the Contractors perform substantially similar conflict checks as are required for Lazard and file or cause to be filed such disclosures as required by Bankruptcy Rule 2014.

10. In the event that, during the pendency of these chapter 11 cases, Lazard seeks reimbursement for any attorneys' fees and/or expenses pursuant to the Engagement Letter, the invoices and supporting time records from such attorneys (which may be redacted for privilege) shall be included in Lazard's fee applications and such invoices and time records shall be in (a) subject to the guidelines promulgated by the U.S. Trustee for compensation and reimbursement of expenses and (b) in compliance with the Bankruptcy Local Rules and approval of the Court under

the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained pursuant to section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Notwithstanding the foregoing, Lazard shall only be reimbursed for any legal fees incurred in connection with this Chapter 11 Case to the extent permitted under applicable law and the decisions of this Court.

11. The Debtors shall be bound by the indemnification, contribution, reimbursement and other provisions of the Engagement Letter and the Indemnification Letter and will indemnify and hold harmless Lazard and each other Indemnified Person³ pursuant to the Engagement Letter and Indemnification Letter, subject during the pendency of these chapter 11 cases to the following:

(a) Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, the Indemnified Persons in accordance with the Indemnification Letter for any claim arising from, related to, or in connection with the services provided for in the Engagement Letter as modified by this Order;

(b) Notwithstanding subparagraph (a) above or any provisions of the Engagement Letter or Indemnification Letter to the contrary, the Debtors shall have no obligation to indemnify or provide contribution or reimbursement to an Indemnified Person (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from such Indemnified Person's fraud, bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Lazard's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible as a result of *In re United Artists Theatre Co.*,

³ Lazard Frères & Co. LLC or any of its current or future affiliates, or any of its or their respective directors, officers, members, employees, agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an "Indemnified Person")

315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which such Indemnified Person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter and Indemnification Letter, as modified by this Order; and

- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Debtors' cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the Debtors' chapter 11 cases, Lazard believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnification Agreement, as modified by this Order, Lazard must file an application therefore in this Court, and the Debtors may not pay any such amounts to Lazard before the entry of an order by this Court approving such payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request by Lazard for indemnification, contribution, or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify.

12. The Debtors shall use reasonable efforts to avoid any duplication of services provided by Lazard and any of the Debtors' other retained professionals in these chapter 11 cases.

13. If Lazard discovers any new or currently unknown conflict with a party in interest pursuant to Schedule 1 or otherwise provided by the Debtors, Lazard will promptly file a supplemental declaration, as required by Fed. R. Bankr. P. 2014(a).

14. To the extent that this Order is inconsistent with the Application, the New Declaration, the Engagement Letter, or the Indemnification Letter, the terms of this Order shall govern.

15. Notice of the Application satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

16. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

17. The Debtors and Lazard are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

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

Dated: _____, 2024
Houston, Texas

THE HON. MARVIN P. ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Engagement Letter

LAZARD

Lazard Frères & Co. LLC
30 Rockefeller Plaza
New York, NY 10112

September 17, 2024

Zachry Holdings, Inc.
527 Logwood Avenue
San Antonio, TX 78224

Attention: Mr. John Zachry
Chairman and Chief Executive Officer

Dear Ladies and Gentlemen:

This letter agreement (the “Agreement”) confirms the understanding and agreement between Lazard Frères & Co. LLC (“Lazard”) and Zachry Holdings, Inc. (“Zachry”) and its controlled subsidiaries that are debtors in the Chapter 11 Cases (as defined below) (collectively with any entity formed or used for the purposes set forth herein, the “Company”).

Assignment Scope:

The Company hereby retains Lazard as its investment banker to assist the Company in connection with any Financing (as defined below) on the terms and conditions set forth herein. By signing this Agreement, we hereby accept our appointment as investment banker under the terms hereof.

Description of Services:

1. Lazard agrees, in consideration of the compensation provided in Section 2 below, to perform such of the following investment banking services as the Company may reasonably request, including:

- (a) Reviewing and analyzing the Company’s business, operations and financial projections;
- (b) Evaluating the Company’s potential debt capacity in light of its projected cash flows;
- (c) Assisting in the determination of a capital structure for the Company;

- (d) Rendering financial advice to the Company and participating in meetings or negotiations with the Company's creditors and/or rating agencies or other appropriate parties in connection with any Financing;¹
- (e) Advising the Company on the timing, nature, and terms of new securities, other consideration or other inducements to be offered pursuant to any Financing;
- (f) Advising and assisting the Company in evaluating any potential Financing transaction by the Company, and, on behalf of the Company, contacting potential sources of capital as the Company may designate and assisting the Company in implementing such Financing;
- (g) Assisting the Company in preparing documentation within our area of expertise that is required in connection with any Financing; and
- (h) Attending meetings of the Board of Directors of Zachry with respect to matters on which we have been engaged to advise hereunder.
- (i) Providing testimony, as necessary, with respect to matters on which we have been engaged to advise hereunder in the Chapter 11 Cases;²

Fees:

2. As consideration for the services to be provided, the Company shall pay Lazard the following fees:

- (a) A fee, payable upon consummation of any Financing (each, a "Financing Fee"), equal to 2.25% of the gross proceeds of such Financing; provided, however, that the Financing Fee will only be payable in connection with one Financing (or series of related Financings).
- (b) In addition to any fees that may be payable to Lazard and, regardless of whether any transaction occurs, the Company shall promptly reimburse Lazard for all reasonable expenses incurred by Lazard (including travel and lodging, data processing and communications charges, courier services and other expenditures) and the reasonable fees and expenses of counsel, if any, retained by Lazard (other than legal fees associated with the negotiation of this Agreement or any amendment or modification hereof). Lazard will request prior authorization from the Company for any out-of-pocket costs and expenses higher than \$50,000 in the aggregate (the "Expense Cap"),

¹ As used in this Agreement, the term "Financing" means any transaction or series of transactions involving the public or private issuance, sale, or placement of newly-issued (including securities held in treasury) equity, equity-linked or debt securities, instruments, or obligations of the Company, and including any debtor-in-possession financing or exit financing in connection with the Chapter 11 Cases. For the avoidance of doubt, any reinstatement, modification or amendment to the terms of the Company's outstanding indebtedness (including, without limitation, any bank debt, bond debt, preferred stock, and other on and off balance sheet indebtedness of the Company) shall not be deemed to be a Financing.

² As used in this Agreement, the term "Chapter 11 Cases" means the chapter 11 cases of Zachry and its debtor subsidiaries pending in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") and jointly administered under Case No. 24-90377.

and such pre-approval shall not be unreasonably denied or withheld by the Company; provided that the Company agrees to negotiate with Lazard, in good faith, an increase in the Expense Cap at such time as the expenses exceed 75% of the Expense Cap. Nothing in this paragraph shall in any way affect or limit the obligations of the Company as set forth in Addendum A attached hereto.

- (c) As part of the compensation payable to Lazard hereunder, the Company agrees to the indemnification, reimbursement, contribution and other provisions (the “Indemnification Letter”) attached to this Agreement as Addendum A and incorporated herein in their entirety.
- (d) All amounts referenced hereunder reflect United States currency and shall be paid promptly in cash after such amounts accrue hereunder.

Lazard’s investment banking services shall not include serving as a dealer-manager in connection with any debt exchange. Any provision of dealer-manager services would be subject to Lazard’s agreement to so act and to the execution of a separate agreement between the parties or an amendment to this agreement, in either case containing terms and conditions to be mutually agreed by the parties addressing such services, including an additional dealer-manager fee.

Retention in Chapter 11 Proceedings:

3. The Company agrees that it will use best efforts to obtain prompt authorization from the Bankruptcy Court to retain Lazard on the terms and conditions set forth in this Agreement under the provisions of Section 328(a) of the Bankruptcy Code. Subject to being so retained, Lazard agrees that during the pendency of any such proceedings, it shall continue to perform its obligations under this Agreement and that it shall file interim and final applications for allowance of the fees and expenses payable to it under the terms of this Agreement pursuant to the applicable Federal Rules of Bankruptcy Procedure, and the local rules and order of the Bankruptcy Court. The Company shall supply Lazard with a draft of the application and proposed retention order authorizing Lazard’s retention sufficiently in advance of the filing of such application and proposed order to enable Lazard and its counsel to review and comment thereon. Lazard shall be under no obligation to provide any services under this Agreement in the event that the Bankruptcy Court declines to approve Lazard’s retention under section 328(a) of the Bankruptcy Code by final order of the Bankruptcy Court, which order is acceptable to Lazard. The retention application shall note that in so agreeing to seek Lazard’s retention under Section 328(a) of the Bankruptcy Code, the Company acknowledges that it believes that Lazard’s general restructuring experience and expertise, and its knowledge of the capital markets in pursuing any Financing, that the value to the Company of Lazard’s services hereunder derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the deferred fees, including the Financing Fee is reasonable regardless of the number of hours to be expended by Lazard’s professionals in the performance of the services to be provided hereunder, and that the deferred fees shall not be considered to be “bonuses” or fee enhancements under applicable law.

Other:

4. No fee payable to any third party, by the Company or any other person or entity, shall reduce or otherwise affect any fee payable hereunder to us.

5. The Company will furnish or cause to be furnished to Lazard such current and historical financial information and other information regarding the business of the Company as Lazard may request in connection with this engagement. The Company represents and warrants to Lazard that all of the foregoing information will be accurate and complete at the time it is furnished, and agrees to keep Lazard advised of all developments materially affecting the Company or its financial position. In performing its services pursuant to this Agreement, Lazard shall be entitled to rely upon information furnished to it by the Company or any third party and information that is publicly available, may assume the accuracy and completeness of such information and shall not assume any responsibility for independent verification of any such information. Lazard will not, as part of its engagement, undertake any independent valuation or appraisal of any of the assets or liabilities of the Company or of any third party.

6. In performing its services pursuant to this Agreement, Lazard is not assuming any responsibility for the decision of the Company or any other party to pursue (or not to pursue) any business strategy or to effect (or not to effect) any Financing or other transaction. Lazard shall not have any obligation or responsibility to provide “crisis management” for or business consultant services to the Company, and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements; nor shall Lazard be responsible for providing or deemed to have provided any tax, accounting, actuarial, legal or other specialist advice.

7. It is understood and agreed that nothing contained in this Agreement shall constitute an express or implied commitment by Lazard or any of our affiliates to underwrite, place or purchase any securities in a financing or otherwise, which commitment shall only be set forth in a separate underwriting, placement agency or purchase agreement, as applicable, relating to the financing.

8. Simultaneously herewith, the parties hereto are entering into the Indemnification Letter. The Indemnification Letter shall survive any termination or expiration of our engagement hereunder.

9. In order to coordinate our efforts on behalf of the Company during the period of our engagement hereunder, the Company will promptly inform Lazard of any discussions, negotiations, or inquiries regarding a potential transaction, including any such discussions or inquiries that have occurred during the six month period prior to the date of this Agreement. In the event that Lazard receives an inquiry concerning any transaction, we will promptly inform the Company of such inquiry.

10. Our engagement hereunder will automatically expire on consummation of a Financing and may be earlier terminated by Zachry or us only upon written notice by the Company or us to the other party at any time (and, for the avoidance of doubt, not by any other action, conduct or event), without liability or continuing obligation to the Company or us following any termination or expiration, except that (a) following any termination or expiration of our engagement we shall remain entitled to any fees accrued pursuant to Section 2 but not yet paid prior to such termination

or expiration, as the case may be, and to reimbursement of expenses incurred prior to such termination or expiration, as the case may be (subject to the Expense Cap), and (b) in the case of termination by Zachry or any expiration of our engagement, we shall remain entitled to full payment of all fees contemplated by Section 2 hereof in respect of any Financing resulting from negotiations occurring during the period from the date hereof until one year following such termination or expiration, as the case may be.

11. Lazard has been retained under this Agreement as an independent contractor to Zachry, and nothing herein is intended to confer any rights or remedies as against Lazard upon any person (including the management, Board of Directors, employees, securityholders and creditors of the Company) other than Zachry. In addition, it is understood and agreed that this Agreement and our engagement do not create a fiduciary relationship between Lazard and any person, including the Company or its management, Board of Directors, employees, securityholders and creditors. No one, other than senior management or the Board of Directors of Zachry (in their capacities as such) is authorized to rely upon the Company's engagement of Lazard or any statements, advice, opinions or conduct by Lazard. Without limiting the foregoing, any advice, written or oral, rendered in the course of the Company's engagement of Lazard are solely for the purpose of assisting senior management or the Board of Directors of Zachry (in their capacities as such) in evaluating the relevant Financing and does not constitute a recommendation to any stakeholder of the Company that such stakeholder might or should take in connection with any Financing. The Company agrees that, notwithstanding any termination or expiration of our engagement, any advice, written or oral, rendered by Lazard and the terms of our engagement hereunder may not be disclosed publicly or made available to third parties without the prior written consent of Lazard. Notwithstanding the foregoing, nothing herein shall prohibit the Company from disclosing to any and all persons the tax treatment and tax structure of any transaction and the portions of any materials that relate to such tax treatment or tax structure.

12. In connection with the services to be provided hereunder, Lazard may employ the services of its affiliates and may share with any such entity any information concerning the Company, subject to the terms of paragraph 14 below. Any such entity so employed shall be entitled to all of the benefits afforded to Lazard hereunder and under the Indemnification Letter and shall be entitled to be reimbursed for its expenses on the same basis as Lazard.

13. Lazard understands that certain work provided by Lazard will be done at the direction of White & Case LLP ("White & Case") to assist White & Case in rendering legal advice, and that communications and correspondence from Lazard, and work product and analyses prepared by Lazard for the Company in connection with this matter, will be considered, at the direction of White & Case, privileged and protected by the attorney work product privilege, attorney client privilege, and any other applicable privilege doctrine available under applicable law. Lazard will use reasonable efforts to mark all material written work product, both in draft and in final, as "PRIVILEGED AND CONFIDENTIAL: ATTORNEY-CLIENT COMMUNICATION ATTORNEY WORK PRODUCT, PREPARED AT REQUEST OF COUNSEL" or other language to similar effect.

14. With respect to any information that is provided to Lazard by or on behalf of the Company in connection with Lazard's engagement hereunder ("Confidential Information"), Lazard agrees as follows:

- (a) Except as required by applicable law, rule or regulation or governmental, legal or regulatory process, Lazard shall not disclose any Confidential Information to any third party unless authorized by the Company; provided, that Lazard may disclose any such information to Lazard's affiliates and its and their respective directors, officers, employees, representatives and other agents, in each case who are subject to an obligation of confidentiality with respect thereto (any of such persons, "Agents").
- (b) Upon written request by the Company, all Confidential Information will, at Lazard's election, either be destroyed or returned to the Company; provided, that the foregoing will not require the destruction or return of materials that are required to be retained by Lazard's or its Agents' internal processes adopted pursuant to applicable law, rule or regulation and will not require Lazard or its Agents to search archived electronic files accessible only to IT and legal/compliance personnel for Confidential Information in order to purge that material from such files; provided, further, that any Confidential Information retained pursuant to the foregoing proviso shall remain subject to the terms of this paragraph 14.
- (c) Confidential Information does not include any information that (i) is published or otherwise becomes available to the public other than as a result of a disclosure by Lazard or any of its Agents in violation of this paragraph 14; (ii) was in Lazard's possession at the time of its disclosure by or on behalf of the Company; (iii) is acquired from a third party that is not known to Lazard to be prohibited from disclosing such information by an obligation of confidentiality to the Company with respect thereto; or (iv) is developed without reference to any of the information so disclosed.
- (d) If Lazard or any of its Agents are requested or required to disclose any Confidential Information by law, rule or regulation or by legal, governmental or regulatory process, Lazard agrees, to the extent practicable and permitted by law, rule, regulation and any relevant legal, governmental and regulatory (including self-regulatory) bodies, to provide the Company with prompt written notice (email will suffice) of any such request or requirement (provided, that no notice will be in connection with any disclosures pursuant to regulatory (including self-regulatory) or judicial requests or requirements that are not specifically targeted at the Company or any potential Transaction).
- (e) This paragraph [14] shall survive the expiration or termination of Lazard's engagement hereunder until the later of (i) the closing of the Company's Chapter 11 Cases and (ii) the date that is one year from the date hereof, and shall then expire.

15. The provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Company, Lazard and any other person entitled to indemnity under the Indemnification Letter. The Company's obligations pursuant to this Agreement shall be joint and several. This Agreement and the related Indemnification Letter embody the entire agreement and

understanding among the parties hereto and supersede any and all prior agreements, arrangements, and understandings, related to the matters provided for herein. No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by each party to be bound thereby.

16. This Agreement and any claim related directly or indirectly to this Agreement (including any claim concerning advice provided pursuant to our engagement hereunder) shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of law. No such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New York or the United States District Court for the Southern District of New York, and each of the parties hereby submits to the jurisdiction of such courts. The Company hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of forum provision is or has become unreasonable in any legal proceeding. The Company waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to or arising out of this Agreement or the engagement of Lazard pursuant to, or the performance by Lazard of the services contemplated by, this Agreement. Notwithstanding the foregoing, the parties hereby irrevocably consent to the exclusive jurisdiction of the Bankruptcy Court over any action or proceeding arising out of or relating to this Agreement while the Chapter 11 Cases remain pending, and the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in Bankruptcy Court while the Chapter 11 Cases remain pending.

If the foregoing Agreement is in accordance with your understanding of the terms of our engagement, please sign and return to us the enclosed duplicate hereof.

Very truly yours,

LAZARD FRERES & CO. LLC

By: _____

Jason New
Vice Chairman

AGREED TO AND ACCEPTED
as of the date first written above:

ZACHRY HOLDINGS, INC., on behalf of itself
and its controlled debtor subsidiaries

By: _____

John Zachry

Chairman and Chief Executive Officer

EXHIBIT 2

Indemnification Letter

LAZARD

Indemnification Letter

Page 1

September 17, 2024

Zachry Holdings, Inc.
527 Logwood Avenue
San Antonio, TX 78224

Attention: John Zachry
Chairman and Chief Executive Officer

Gentlemen:

In connection with our engagement to advise and assist Zachry Holdings, Inc. and its controlled debtor subsidiaries (collectively, “you” or the “Company”) with the matters set forth in the engagement letter of even date herewith, you and we are entering into this letter agreement. It is understood and agreed that in the event that Lazard Frères & Co. LLC or any of our current or future affiliates, or any of our or their respective directors, officers, members, employees, agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an “Indemnified Person”), become involved in any capacity in any action, claim, proceeding or investigation brought or threatened by or against any person, including your securityholders, related to, arising out of or in connection with our engagement, you will promptly reimburse each such Indemnified Person for its reasonable, documented and out-of-pocket legal and other expenses (including the reasonable cost of any investigation and preparation) as and when they are incurred in connection therewith. You will indemnify and hold harmless each Indemnified Person from and against any losses, claims, damages, liabilities or expenses to which any Indemnified Person may become subject under any applicable federal or state law, or otherwise, related to, arising out of or in connection with our engagement, whether or not any pending or threatened action, claim, proceeding or investigation giving rise to such losses, claims, damages, liabilities or expenses is initiated or brought by you or on your behalf and whether or not in connection with any action, claim, proceeding or investigation in which you or any such Indemnified Person are a party, except to the extent that any such loss, claim, damage, liability or expense is found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted primarily from such Indemnified Person’s bad faith, gross negligence, or willful misconduct. Each Indemnified Person shall promptly remit to the Company any amounts paid to such Indemnified Person under this Agreement in respect of losses, claims, damages, liabilities or expense that are found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted from such Indemnified Person’s gross negligence, bad faith or willful misconduct. You also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your securityholders or creditors related to, arising out of or in connection with our engagement except to the extent that any loss, claim, damage or liability is found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted primarily from such Indemnified Person’s bad faith or gross negligence.

LAZARD

Indemnification Letter

Page 2

If for any reason the foregoing indemnification is held unenforceable or is otherwise unavailable, then you shall contribute to the loss, claim, damage, liability or expense for which such indemnification is held unenforceable in such proportion as is appropriate to reflect the relative benefits received, or sought to be received, by you and your securityholders and creditors on the one hand and the Indemnified Persons on the other hand in the matters contemplated by our engagement as well as the relative fault of yourselves and such persons with respect to such loss, claim, damage, liability or expense and any other relevant equitable considerations. You agree that for the purposes hereof the relative benefits received, or sought to be received, by you and your securityholders and creditors and the Indemnified Persons shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid by or to you and your securityholders and creditors, as the case may be, pursuant to any transaction (whether or not consummated) for which we have been engaged to perform investment banking services bears to (ii) the fees paid or proposed to be paid to us in connection with such engagement; provided, however, that, to the extent permitted by applicable law, in no event shall we or any other Indemnified Person be required to contribute an aggregate amount in excess of the aggregate fees actually paid to us for such investment banking services. Your reimbursement, indemnity and contribution obligations under this agreement shall be joint and several, shall be in addition to any liability which you may otherwise have, shall not be limited by any rights we or any other Indemnified Person may otherwise have and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of yourselves, ourselves, and any other Indemnified Persons.

No Indemnified Person may, without the Company's prior written consent (which will not be unreasonably withheld), settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, proceeding or investigation in respect of which indemnification or contribution will be sought hereunder. You agree that, without our prior written consent (which will not be unreasonably withheld), you will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, proceeding or investigation in respect of which indemnification or contribution could be sought hereunder (whether or not we or any other Indemnified Persons are an actual or potential party to such claim, action, proceeding or investigation), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Person from all liability arising out of such claim, action, proceeding or investigation. No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by each party to be bound thereby. This agreement and any claim related directly or indirectly to this agreement shall be governed and construed in accordance with the laws of the State of New York (without giving regard to the conflicts of law provisions thereof). No such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New York or the United States District Court for the Southern District of New York, and each of us hereby submits to the jurisdiction of such courts. The Company hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of forum provision is or has become unreasonable in any legal proceeding. You (on your own behalf and, to the extent permitted by applicable law, on behalf of your securityholders and creditors) waive all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to, arising out of or in connection with this Agreement or our engagement. Notwithstanding the foregoing, Lazard and the Company hereby irrevocably consent to the exclusive jurisdiction of the Bankruptcy Court over

LAZARD

Indemnification Letter

Page 3

any claim related directly or indirectly to this Agreement and while the Chapter 11 Cases involving the Company remain pending, the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in such Bankruptcy Court while the Chapter 11 Cases remain pending.

This agreement shall remain in effect indefinitely, notwithstanding any termination or expiration of our engagement.

Very truly yours,

LAZARD FRERES & CO. LLC

By



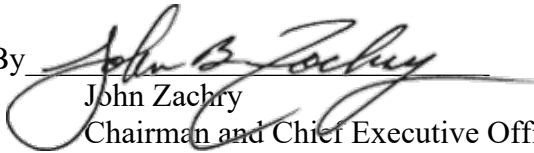
Jason New
Vice Chairman

AGREED TO AND ACCEPTED

as of the date first
above written:

ZACHRY HOLDINGS, INC., on behalf of itself
and its controlled debtor subsidiaries

By



John Zachry

Chairman and Chief Executive Officer

Redline Comparison

**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)
)	

**ORDER AUTHORIZING THE RETENTION
AND EMPLOYMENT OF LAZARD FRÉRES & CO.
LLC AS INVESTMENT BANKER FOR THE DEBTORS**

Upon the application (the “**Application**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), authorizing the retention and employment of Lazard Frères & Co. LLC (“**Lazard**”) effective as of the Engagement Execution Date, to provide the Services described therein in accordance with the terms and conditions set forth in the Engagement Letter attached as **Exhibit 1**, all as more fully set forth in the Application; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and due, sufficient, and proper notice of the Application having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and upon consideration of the Application, the Meghji Declaration, the

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

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

New Declaration, and all proceedings had before the Court; and this Court having found and determined that Lazard is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code, and does not hold or represent any interest materially adverse to the Debtors’ estates with respect to the matters upon which it is to be employed, that Lazard’s employment is necessary and in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and this Court having found that the Debtors’ notice of the Application and an opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in support of the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized, pursuant to sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Bankruptcy Local Rules 2014-1 and 2016-1, to employ and retain Lazard as their investment banker in accordance with the terms and conditions set forth in the Engagement Letter, as modified by this Order, effective as of the Engagement Execution Date and to pay fees and reimburse expenses to Lazard on the terms and at the times specified in the Engagement Letter, ~~except~~ as limited or modified ~~herein~~by this Order.

2. The provisions set forth in the Engagement Letter and the Indemnification Letter are approved in all respects except as limited or modified ~~herein~~by this Order.

3. The terms of Lazard's compensation set forth in the Engagement Letter and the Indemnification Letter, as modified by this Order, including, without limitation, the fees and expenses and the indemnification, contribution, and related obligations are approved pursuant to section 328(a) of the Bankruptcy Code, and Lazard shall be compensated, reimbursed, and indemnified pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of, and at the times specified in, the Engagement Letter and the Indemnification Letter, as modified by this Order, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures (except as otherwise set forth herein), and any other applicable orders of this Court.

4. None of the fees payable to Lazard shall constitute a "bonus" or fee enhancement under applicable law.

5. Notwithstanding anything to the contrary in the Application, Engagement Letter, or the New Declaration, to the extent the Debtors wish to expand the scope of Lazard's services beyond those services set forth in the Application, Engagement Letter, or the New Declaration, such other services shall be subject to separate application and approval by Court order.

6. Lazard shall file interim and final fee applications, ~~and shall be paid pursuant to an order of this Court approving an interim or final~~ for the allowance of compensation for services rendered and reimbursement of expenses ~~pursuant to the procedures set forth in~~ incurred in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable orders of this Court, ~~and such applications;~~ provided that Lazard shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code, and Lazard's fees and expenses shall not be subject to review ~~by the Court;~~ provided that the fee applications filed by Lazard shall be subject to review only pursuant

~~to under the standard of review set forth in section 328 of the Bankruptcy Code and not subject to the standard of review set forth in section 330 of the Bankruptcy Code, except as otherwise expressly set forth herein.~~

7. Notwithstanding any provision to the contrary in this Order, the Application, or the Engagement Letter, the U.S. Trustee shall have the right to object to Lazard's request(s) for interim and final applications for compensation based on the ~~reasonableness~~ standard provided in section 330 of the Bankruptcy Code; ~~provided that "reasonableness" shall be evaluated by comparing (among the other factors set forth in section 330(a)(3) of the Bankruptcy Code) the fees payable in these chapter 11 cases to fees paid to comparable investment banking firms with similar experience and reputation offering comparable services in other chapter 11 cases and shall not be evaluated primarily on an hourly or length of case criterion.~~ This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Lazard's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Lazard's fees.

8. Lazard shall include in its monthly, interim, and final fee applications, among other things, reasonably detailed time records setting forth, in a summary format by project category, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in half-hour (0.5) increments, but Lazard shall be excused from keeping time in tenth-hour (0.1) increments.

9. Notwithstanding anything to the contrary in the Application, the Engagement Letter, or the New Declaration, to the extent that Lazard uses the services of independent or third-party contractors or subcontractors (the “**Contractors**”) in these cases and Lazard seeks to pass through the fees and/or costs of the Contractors to the Debtors, Lazard shall (a) pass through the fees of such Contractors to the Debtors at the same rate that Lazard pays such Contractors; and (b) seek reimbursement for actual costs of the Contractors only. In addition, the Debtors shall ensure that the Contractors perform substantially similar conflict checks as are required for Lazard and file or cause to be filed such disclosures as required by Bankruptcy Rule 2014.

10. In the event that, during the pendency of these chapter 11 cases, Lazard seeks reimbursement for any attorneys’ fees and/or expenses pursuant to the Engagement Letter, the invoices and supporting time records from such attorneys (which may be redacted for privilege) shall be included in Lazard’s fee applications and such invoices and time records shall be in (a) subject to the guidelines promulgated by the U.S. Trustee for compensation and reimbursement of expenses and (b) in compliance with the Bankruptcy Local Rules and approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained pursuant to section 327 of the Bankruptcy Code and without regard to whether such attorney’s services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

Notwithstanding the foregoing, Lazard shall only be reimbursed for any legal fees incurred in connection with this Chapter 11 Case to the extent permitted under applicable law and the decisions of this Court.

11. The Debtors shall be bound by the indemnification, contribution, reimbursement and other provisions of the Engagement Letter and the Indemnification Letter and will indemnify and hold harmless Lazard and each other Indemnified Person³ pursuant to the Engagement Letter

³ Lazard Frères & Co. LLC or any of its current or future affiliates, or any of its or their respective directors, officers, members, employees, agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an “**Indemnified Person**”)

and Indemnification Letter, subject during the pendency of these chapter 11 cases to the following:

- (a) Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, the Indemnified Persons in accordance with the Indemnification Letter for any claim arising from, related to, or in connection with the services provided for in the Engagement Letter [as modified by this Order](#);
- (b) Notwithstanding subparagraph (a) above or any provisions of the Engagement Letter or Indemnification Letter to the contrary, the Debtors shall have no obligation to indemnify or provide contribution or reimbursement to an Indemnified Person (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from such Indemnified Person's [fraud](#), bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Lazard's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible as a result of *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which such Indemnified Person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter and Indemnification Letter, as modified by this Order; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Debtors' cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the Debtors' chapter 11 cases, Lazard believes

agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an "Indemnified Person")

that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnification Agreement, as modified by this Order, Lazard must file an application therefore in this Court, and the Debtors may not pay any such amounts to Lazard before the entry of an order by this Court approving such payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request by Lazard for indemnification, contribution, or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify.

12. The Debtors shall use reasonable efforts to avoid any duplication of services provided by Lazard and any of the Debtors' other retained professionals in these chapter 11 cases.

~~13. The relief granted herein, including, without limitation, approval pursuant to section 328(a) of the Bankruptcy Code of the fees and expenses and the indemnification obligations, shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.~~

13. If Lazard discovers any new or currently unknown conflict with a party in interest pursuant to Schedule 1 or otherwise provided by the Debtors, Lazard will promptly file a supplemental declaration, as required by Fed. R. Bankr. P. 2014(a).

14. To the extent that this Order is inconsistent with the Application, the New Declaration, the Engagement Letter, or the Indemnification Letter, the terms of this Order shall govern.

15. Notice of the Application satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

16. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

17. The Debtors and Lazard are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

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

Dated: _____, 2024
Houston, Texas

THE HON. MARVIN P. ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Engagement Letter

EXHIBIT 2

Indemnification Letter

Summary report: Litera Compare for Word 11.8.0.56 Document comparison done on 10/10/2024 6:45:19 PM	
Style name: 2 WC StandardSet	
Intelligent Table Comparison: Active	
Original filename: Zachry - Proposed Order Granting Lazard Retention App (filing version) (002).docx	
Modified filename: Zachry - Proposed Order Granting Lazard Retention App (filing version)(128213982.3).docx	
Changes:	
<u>Add</u>	18
Delete	14
Move From	1
<u>Move To</u>	1
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	34