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

ZACHRY HOLDINGS, INC., *et al.*	§	CASE NO. 24-90377 (MI)
	§	
DEBTORS	§	CHAPTER 11
	§	
	§	(Jointly Administered)

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST'S RESPONSE TO THE REORGANIZED DEBTORS' EMERGENCY MOTION TO ENFORCE THE CONFIRMED FURTHER MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC., WITH RESPECT TO THE NEBRASKA LITIGATION
[Relates to Docket #2797]

COMES NOW, Commonwealth Electric Company of the Midwest ("CECM"), and files this Response (the "Response") to the Reorganized Debtors' Emergency Motion to Enforce the Confirmed Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates With Respect to the Nebraska Litigation [Doc. 2797] (the "Emergency Motion"), and would respectfully show as follows:

PRELIMINARY STATEMENT

1. The Emergency Motion should be denied because (i) it improperly requests the Bankruptcy Court to broaden the narrowly tailored Plan injunction for the benefits of non-debtors (the Sureties) in violation of the Bankruptcy Code and well-established Fifth Circuit and Supreme Court precedent; (ii) CECM's prosecution of the Nebraska Litigation is consistent with the terms of the Plan; and (iii) there is no basis for emergency consideration because the upcoming discovery for the Sureties in the Nebraska Litigation was agreed to by the Sureties in October 2024. Accordingly, the Motion should be denied.

SUMMARY OF FACTUAL BACKGROUND

2. Zachry Holdings, Inc., along with certain subsidiaries, including Zachry Industrial, Inc. ("Zachry" or "Debtors"), filed for Chapter 11 bankruptcy on May 21, 2024 (the "Petition Date").

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3. 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.

4. Omaha Public Power District ("OPPD" or "Owner") entered into an Engineering, Procurement, and Construction Contract (Contract No. 263406) (the "Contract") with Zachry for the 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").

5. Zachry, as principal, and Travelers Casualty and Surety Company of America ("Travelers"), and Pacific Indemnity Company ("Pacific"), as co-sureties (collectively, the "Sureties"), duly executed a Performance and Payment Bond, identified as Travelers Bond No. 107261753 and Pacific Bond No. 82455022 (the "Bond"), "jointly and severally" binding themselves to pay for all labor, materials, and equipment furnished on the Projects in connection with the Contract.[1]

6. On or about November 14, 2023, Zachry and CECM entered into a Service Agreement for CECM to provide labor and materials on the Standing Bear Lake Project (the "Standing Bear T&M Subcontract").[2]

7. The Standing Bear T&M Subcontract is governed by Nebraska law.[3]

8. Pursuant to the terms of the Standing Bear T&M Subcontract, CECM provided labor and materials on the Standing Bear Lake project on a time and materials basis. Generally,

[1] See Bond attached hereto as Exhibit 1.
[2] The parties entered into a total of five service agreements, but for purposes of the current disputed portion of the claim pending before this Court, the relevant service agreement is the Standing Bear Lake T&M Subcontract (#115001-605028).
[3] See Exhibit 2, Standing Bear T&M Subcontract § 20.4, attached hereto.

on a time and materials subcontract, the subcontractor is paid based upon the cost of labor and materials used.[4]

9. On or about May 15, 2024, Zachry notified Commonwealth as follows:[5]

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,

Lyle Fouts
EPC Project Manager
foutsl@zachrygroup.com

10. As of May 15, 2024, there had been no allegations of defective work, or incomplete work. To the contrary, and further demonstrating that there was no defective work, Zachry issued change Order #1 on April 11, 2024, doubling CECM's contract value to continue to work and extending their performance period.[6]

[4] A time and materials subcontract requires that the subcontractor is reimbursed for all costs incurred, including labor, materials and supplies, among other things. On the other hand, a "fixed fee" or "lump sum" subcontract, requires that the subcontractor complete the project or scope of work for a set price, regardless of the actual costs incurred. In summary, a time and materials subcontract provides flexibility and ensures that the subcontractor is compensated for all actual costs plus a profit margin, while a fixed fee contract provides cost certain for the general contractor and places the risk of cost overruns on the subcontractor. The Subcontracts at issue in this matter are time and materials subcontracts.

[5] See Notice of Termination for Convenience attached hereto as Exhibit 3.

[6] Zachry represented to CECM that they were terminating for convenience because Zachry located a different non-union contractor that would perform the work at a significantly discounted rate. Indeed, the evidence will show that the replacement non-unionized contractor rate for journeymen electricians was approximately 30% less than the rate agreed to by Zachry with CECM.

11. On May 21, 2024, Zachry initiated this Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Texas, captioned as Case No. 24-90377-H1-11 (this "Bankruptcy Case").

12. After the commencement of the Bankruptcy Case, Zachry directed CECM to perform additional work or provide materials per the terms of the non-terminated subcontracts. CECM performed the requested work but remains unpaid for the post-petition period in the amount of $196,199.98.

13. By correspondence dated June 4, 2024, CECM provided Travelers and Pacific with notice of its payment claims against the Bond for work performed under the multiple subcontracts.

14. The Sureties have not issued any payments to CECM under the Bond for any of the work performed pursuant to any of the five relevant subcontracts.

15. On August 27, 2024, CECM timely filed proof of claim no. 1003 in bankruptcy case 24-90385 for Zachry Industrial, Inc. for $**5,359,030.62** (the "CECM Bankruptcy Claim"). The CECM Bankruptcy Claim is summarized as follows:

Job Description	**Subcontract #**	**Pre-petition claim**	**Disputed?**
Standing Bear T&M Subcontract	115001-605028	$4,948,849.68	Yes, $2,651,982 in dispute.
Standing Bear	115001-600327	$92,255.00	No
Turtle Creek	115002-600359	$104,071.50	No
OPPD Standing Bear Fiber Procurement	115001-598870	$129,256.70	No
OPPD Turtle Creek Fiber Procurement	115002-598862	$84,597.74	No
TOTAL OWED ON CECM BANKRUPTCY CLAIM		**$5,359,030.62**	

16. On August 23, 2024, CECM initiated a lawsuit in the United States Court for the District of Nebraska at Case No. 4:24-cv-03149 against Travelers and Pacific (the "Nebraska

Litigation"), as co-sureties of the Bond for all amounts owed under the Bonds, plus statutory interest and attorneys' fees as allowed by Nebraska law (the "Bond Claim"). As of April 15, 2025, the amount owed to CECM on the Bond Claim is approximately **$6,255,015.62**, and is summarized as follows:

Job Description	Subcontract #	Pre-petition claim	Post-petition claim	Totals
Standing Bear T&M Subcontract	115001-605028	$4,948,849.68	0	$4,948,849.68
Other Subcontracts	115001-600327 115002-600359 115001-598870 115002-598862	$410,180.94	$219,907.00	
Interest Per Neb. Rev. Stat §45-104, costs & fees through 4/15/2025 (est).				$676,078.00
TOTAL OWED BY SURETIES ON BOND CLAIM		**$5,359,030.62**	**$219,907.00**	**$6,255,015.62**

17. On October 21, 2024, the Nebraska District Court (by agreement of the parties) entered a Final Progression Order providing, among other things:[7]

- the deadline to complete written discovery was March 31, 2025, and
- the deadline for the Sureties to complete expert disclosures is May 14, 2025.

18. On February 17, 2025, Commonwealth timely submitted its ballot opting out of all Third-Party Releases contained within the Debtors' Modified Amended Joint Plan of Reorganization (the "Plan") and voted against the Plan [Doc. 2281].[8]

19. On February 20, 2025, Debtors filed an Objection in the Bankruptcy Case to the Proof of Claim of Commonwealth Electric Company of the Midwest (Claim No. 1003) [Doc. 2336] ("the Claim Objection").

20. On March 26, 2025, Travelers and Pacific filed a Motion to Stay in the Nebraska Litigation requesting a finding that the Confirmation Order and the Debtor's Plan release all claims of CECM against Travelers and Pacific and the Bond and that Nebraska Federal District Court

[7] See Final Progression Order attached hereto as Exhibit 4.
[8] See Exhibit 5 attached hereto and incorporated by reference.

"permanently enjoin Commonwealth from pursuing its Claim against the Sureties" (the "Sureties Motion to Abate").

21. On April 9, 2025, CECM filed its Response and Brief in Opposition to the Sureties Motion to Abate. The Sureties Motion to Abate remains pending in the Nebraska Litigation.

22. As identified above, (and contrary to the assertion of the Reorganized Debtors and the Sureties), the Claim Objection and the Nebraska Litigation are not duplicative. The Nebraska Litigation includes additional post-petition amounts owed by the Sureties, plus statutory interest, costs and legal fees pursuant to Nebraska law.

23. Now, in an attempt to avoid the expert disclosure requirements due on May 14, 2025, in the Nebraska Litigation, the Reorganized Debtors seek emergency injunctive relief pursuant to 11 U.S.C. §105(a) to prevent CECM from prosecuting its claims against the Sureties in the Nebraska Litigation.

24. On May 6, 2025, counsel for the Sureties in the Nebraska Litigation notified CECM and requested a two-week extension to the May 14, 2025, expert disclosure deadlines, because, in part "we understand that our experts have had additional deadlines the last few weeks that have pulled attention away from this matter."[9] CECM agreed to a seven-day extension of the deadline.

RESPONSE TO REQUEST RELIEF

25. Zachry wrongfully seeks an order requesting the Bankruptcy Court exercise a gate keeping role over claims against non-debtors. The Fifth Circuit has consistently held, and as recently affirmed by the United States Supreme Court, that a bankruptcy court does not have gate keeping power over claims against non-debtors and "that the Bankruptcy Code does not authorize a release or injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without the consent of the affected claimants." *Matter of Highland Cap. Mgmt., L.P.*, 132 F.4th 353, 358 (5th Cir. 2025) (citing *Harrington v. Purdue*

[9] See Exhibit 6 attached hereto and incorporated by reference.

Pharma, L.P., 603 U.S. 204 (2024). Further, CECM's continued prosecution of the Nebraska Litigation is consistent with the terms of the Plan and promotes the final resolution of all CECM claims against the Sureties. Moreover, there is no basis for emergency consideration of the relief requested. The Sureties (and Zachry) have known about the May 14, 2025, expert designation deadline since October 14, 2024, and the Sureties agreed to the May 14, 2025, deadline.

26. Further, counsel for the Sureties represented to CECM that the request to extend the expert disclosure deadlines in the Nebraska Litigation, is because its experts need to perform "supplemental investigation," and "our experts have had additional deadlines the last few weeks that have pulled attention away from this matter." The Sureties failure to plan in the Nebraska Litigation does not constitute an emergency in this Bankruptcy Case. Accordingly, emergency consideration and relief are not warranted, and the Emergency Motion should be denied.

a. The Sureties are Jointly and Severally Liable under the Statutory Payment Bond.

27. It is well established that the payment Bond at issue is not property of Zachry's bankruptcy estate and the stay is not applicable to actions against surety bonds. *See O'Malley Lumber Co. v. Lockard (In re Lockard),* 884 F.2d 1171, 1177–78 (9th Cir. 1989); *Ohio v. Mansfield Tire & Rubber Co. (In re Mansfield Tire & Rubber Co.),* 660 F.2d 1108, 1115 (6th Cir. 1981); *In re Petroleum Piping Contractors, Inc.,* 211 B.R. 290, 312 (Bankr. N.D. Ind. 1997), *McLean Trucking Co. v. Dep't of Indus. Rels. (In re McLean Trucking Co.),* 74 B.R. 820, 826–29 (Bankr. W.D.N.C. 1987). Tellingly, Zachry does not argue to the contrary. Instead, Zachry argues that CECM does not have "an independent right to pursue such relief against the Sureties … and [i]ts ability to obtain payment from the Sureties is derivative and contingent on whether Commonwealth has an allowed claim against Zachry that it has refused to pay."[10]

28. First, Zachry has no independent right to the proceeds of the Bonds and therefore CECM's claims against the payment Bond is not a "derivative" claim. Derivative claims in the

[10] Emergency Motion at §24.

bankruptcy context are defined as "those that arise from harm done to the estate and that seek relief against third parties that pushed the debtor into bankruptcy. *In re Am.'s Ins. Ctr., Inc.,* 620 B.R. 528, 534–35 (Bankr. D.N.J. 2020). Claims are considered non-derivative when they constitute independent and particularized claims, belonging only to the plaintiffs as individual creditors. While non-derivative claims are personal to the individual creditor, a derivative claim that could be brought by any of the debtor's creditors is the property of the estate. *Id*. Any recovery on account of a derivative claim goes directly to the debtor's estate to benefit all creditors, while any recovery on account of a non-derivative claim goes directly to the claimant. In this case, it is easy to discern that CECM's claims against the Bond are not derivative and can only be asserted by CECM.

29. Second, Zachry's reliance that general surety principles as cited in the Emergency Motion to stay the Nebraska Litigation is misplaced. The Bond at issue in this lawsuit is a statutory bond, which alters the general rules that otherwise govern the law of suretyship. *Stock v. Meissner*, 217 Neb. 56, 58, 348 N.W.2d 426, 428 (1984) (explaining that the general proposition that "a surety's obligation is not an original or direct one but, rather, is collateral to the principal's obligation" is not applicable to a statutory bond). Instead, "[t]he liability of a surety on statutory undertakings is measured by the terms of the statute rather than by the terms set forth in the agreement, where the two are in conflict, as the statute forms a controlling part of every such agreement." *State Sur. Co. v. Peters*, 197 Neb. 472, 475, 249 N.W.2d 740, 742 (1977). This is because a statutory bond, also called an official bond, creates "a new obligation; the liability of both principal and surety is original and primary." *Meissner*, 348 N.W.2d at 428. "A statutory bond will be construed in the light of the purpose for which it is required as expressed in the statute… Accordingly, in view of the fact that the public has an interest in official and other statutory bonds, such bonds should be liberally construed to effect the purpose for which they were given, and the ordinary rules of construction give way." *State Sur. Co. v. Peters*, 197 Neb. 472, 477, 249 N.W.2d 740, 743 (1977) (*quoting Sun Ins. Co. v. Aetna Inc. Co*. 169 Neb. 94, 98 N.W.2d 692 (1959))

30. Here, the payment Bond provided by the Sureties references and incorporates the provisions of Neb. Rev. Stat. § 52-118. (Ex. 1). The Bond "is a statutory bond required to be furnished in connection with any contract for the erecting or repair of any public building or structure where the general provisions of the mechanic's lien laws do not apply and where the mechanics, laborers, and materialmen have no lien to secure payment for labor, material, and equipment." *Dukane Corp. v. Sides Const. Co.*, 208 Neb. 227, 229, 302 N.W.2d 721, 722 (1981); accord *Fremont Foundry & Mach. Co. v. Saunders Cnty.*, 285 N.W. 115, 121 (Neb. 1939).

31. As in *Meissner*, here the terms of the statutory bond provided that Zachry, as principal, and Travelers and Pacific, as co-sureties, are "jointly and severally" bound and liable for the payment of all laborers and mechanics for all labor performed and otherwise in conformity with the provisions of Neb. Rev. Stat. § 52-118. (Ex. 1, ¶ 1). This is because under Nebraska law the payment bond procured for a public building or structure provides an alternative avenue for mechanics, laborers, and materialmen to secure payment for labor, material, and equipment provided on the Projects. Accordingly, CECM should be empowered to proceed with its claims directly against the Sureties in the Nebraska Litigation, as the liability of both principal and surety to CECM is original and primary.

b. Staying the Nebraska Litigation Would be Contrary to Nebraska Law.

32. As explained above, the purpose of Neb. Rev. Stat. § 52-118 is to ensure that contractors have another remedy or avenue to be paid on a public project, in the event the general contractor fails to pay for the work performed. As the Nebraska Supreme Court has explained, "[b]efore our statute (Rev.St.1913, § 3840) was enacted in 1889 (Laws 1889, c. 28),[11] the laborer or materialman who furnished labor or material for the erection of a public building had no

[11] In 1889 the Nebraska legislature passed an act entitled "An act to secure the payment of mechanics' and laborers' wages on all public buildings where the provisions of the general mechanics' lien laws do not apply." *Peter Kiewit Sons' Co. v.Nat'l Cas. Co.*, 142 Neb. 835, 841, 8 N.W.2d 192, 195 (1943) (citing Laws 1889, ch. 28). In 1913 the act was amended by the insertion therein of certain provisions to secure payment of materialmen who furnished material for the construction of public buildings. *Id.* (citing Laws 1913, ch. 170). The act as amended became section 3840, Rev.St.1913 and is now section 52–118. *Id.*

protection except the responsibility of the contractor, and such bond as the contractor and the public officials might see fit to provide. A laborer who was in the habit of relying upon the mechanic's lien law frequently found that he had worked upon public buildings without compensation. Then the statute was enacted requiring absolutely that one who contracted to build a public building which would not be subject to mechanics' liens must give bond to pay laborers and materialmen." *Fremont Foundry & Mach. Co. v. Saunders Cnty*., 136 Neb. 101, 285 N.W. 115, 121 (1939) (quoting *Nye-Schneider-Fowler Co. v. Roeser*, 103 Neb. 614, 173 N.W. 605, 606 (1919), judgment set aside on reh'g, 104 Neb. 389, 177 N.W. 750 (1920)). *Accord McElhose v. Universal Sur. Co.*, 182 Neb. 847, 858, 158 N.W.2d 228, 235 (1968) (explaining that "Section 52—118, R.S.Supp., 1965, and sections 52—118.01 and 52—118.02, R.R.S.1943, are highly remedial in their nature" and "they should be given a liberal construction and application in order to give effect to the intention of the Legislature to protect those whose labor and materials become a part of public projects.")

33. Pursuant to Neb. Rev. Stat. § 52-118.01, a subcontractor's right of recovery on a statutory payment bond accrues ninety days after the subcontractor has completed the work for which it seeks payment, not "when and if" the prime contractor fails to pay, or "when and if" the prime contractor resolves its debts in a bankruptcy action. Further, a claimant may only institute a suit under Neb. Rev. Stat. § 52-118.01 within one year after the date of final settlement of the principal contract. Neb. Rev. Stat. § 52-118.02. Thus, the Nebraska Litigation against the sureties on the statutory payment bond is not "premature" as suggested by Debtors in the Emergency Motion. Permitting a statutory bond surety to avoid liability on the payment bond based on a pending bankruptcy proceeding of the prime contractor would, for all practical purposes, prohibit a subcontractor from exercising its statutory rights until the prime contractor has resolved the bankruptcy proceeding. In cases where the prime contractor does not resolve the bankruptcy within

the one year statute of limitations period, the subcontractor would be barred from asserting its statutory rights. This is not the intent of Neb. Rev. Stat. § 52-118.[12]

34. In this case, Zachry, a general contractor on a public project, elected to terminate its subcontractor for convenience, at a time when it owed CECM approximately $5,359,030.62. Less than a week later, Zachry initiated the Bankruptcy Case. CECM has no lien rights to secure payment from OPPD, the owner of the public Projects. Significantly more than 90 days passed since CECM performed its work for which it has been unpaid. This unfortunate factual scenario is the specific harm that the Legislature sought to remedy when it enacted the predecessor to Neb. Rev. Stat. § 52-118 more than one hundred thirty years ago. CECM should not be enjoined from moving forward with its claims against the Sureties on the Bond.

c. The Sureties are Not a Released Party under the Plan and the Sureties Obligations under the Bond Remain Intact.

35. In the Emergency Motion, Zachry does not assert that the Sureties are Released Parties under the Plan, that CECM's opt-out of the third-party releases are unenforceable, or that the Plan altered the Sureties obligations under the Bonds. Indeed, both the Plan and Confirmation Order affirm that the Sureties are not Released Parties and obligations under the "Existing Surety Bonds" are not altered in any way.[13] For the avoidance of doubt, the Confirmation Order states:

> **"Provisions Regarding the Sureties.** … The Sureties shall be deemed to have opted out of the Third-Party Release provided in **Article VIII.D** of the Plan, and such Third-Party Release shall not be applicable to the Sureties."[14]

36. The Confirmation Order continues that:

> "No **provision** of the Plan Documents shall bar, release, impair, expand, alter, modify, amend, transfer, limit, enjoin, prime, or subordinate the rights, claims, and defenses of

[12] Zachry's Plan provides that, upon the occurrence of multiple conditions precedent, unsecured creditors (such as CECM) will be paid the principal amount of the Claim no earlier than July 2028. Whether such Claims are ever actually paid is speculative. The 3+ year waiting period under the Zachry Plan is contrary to the 90-day waiting period provided by the Nebraska statute.

[13] On the other hand, the Sureties argue to the Nebraska District Court that the Plan releases of them from the claims asserted by Commonwealth and that CECM's opt-out of third-party releases is unenforceable.

[14] See Dkt. 2431, pg. 80 at ¶166

> Travelers Casualty & Surety Company of America, Pacific Indemnity Company, or any of the foregoing's parent companies, affiliates, and/or successors (each a "**Surety",** and collectively, the "**Sureties")** under (1) any surety bonds by the Sureties (collectively, the "**Existing Surety Bonds"),** (2) any indemnity agreements or other agreements between any Surety and any Debtor in these bankruptcy cases related to the Existing Surety Bonds (the "**Prepetition Indemnity Agreements"),** or (3) the terms, conditions, rights, claims, defenses, and/or obligations of the Sureties or of the Debtors under the Existing Surety Bonds or the Prepetition Indemnity Agreements."[15]

37. In support of the Emergency Motion, Zachry relies on: (i) Article XI and Article VIII. F., of the Plan, (ii) paragraph 86 of the Confirmation Order, and (iii) 11 U.S.C. 105(a). First, Article XI of the Plan relates to the Bankruptcy Court's retention of jurisdiction, and provides, in pertinent part:

> "…If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article XI, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter ….
>
> …[u]nless otherwise specifically provided herein or in a prior Order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date."[16]

38. CECM does not assert that the Bankruptcy Court does not have jurisdiction over the Claim Objection. The Bankruptcy Court can abstain from the Claim Objection during the pendency of the Nebraska Litigation, but for the reasons explained below, the Bankruptcy Court's jurisdiction over the Claim Objection does not grant it gate keeping authority over CECM's claims against the Sureties in the Nebraska Litigation.

39. Zachry improperly relies on the injunction contained in Article VIII. F of the Plan in support of its request to enjoin CECM from pursuing claims against the Sureties. However, the injunction contained in Article VIII. F, only applies to "Claims" against the Debtor.[17]

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[15] See Dkt. 2431, pg. 79
[16] See Dkt. #2431, pgs. 137 -138.
[17] The Plan provides that a "Claim" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

40. As an initial matter, the Confirmation Order, in pertinent part, specifically addresses the "Injunction" provisions set forth in Article VIII. F of the Plan, as follows:

> **"Injunction.** The injunction provision set forth in **Article VIII.F** of the Plan is necessary to implement, preserve, and enforce the Debtors' discharge, the Debtor Release, the Third-Party Release, the Exculpation, and the GPX Settlement, and is narrowly tailored to achieve this purpose."

41. The Confirmation Order is explicit that the "narrowly tailored" injunction set forth in Article VIII. F is to protect the Debtors, the Reorganized Debtors, the Exculpated Parties and the Released Parties, not the Sureties. The Sureties are not entitled to a *sub rosa* "release and injunction" contained within Article VIII. F. Zachry's request that the injunction in Article VIII. F be broadly interpreted to protect the Sureties directly contradicts the terms of the Confirmation Order determining that the injunction is "narrowly tailored." Accordingly, CECM should not be enjoined from pursuing its claims against the Sureties in the Nebraska Litigation based upon Article VIII. F of the Plan.

42. Next, Zachry's request to expand the injunction to protect the Sureties from the Nebraska Litigation is contrary to well established 5th Circuit precedent. As recently explained by the Fifth Circuit in *Highland Capital Management*, use of section 105 of the Bankruptcy Code must be consistent with the rest of the Bankruptcy Code, and "any bankruptcy court action must square with the Bankruptcy Code's edict that 'discharge of debt of the debtor does not affect the liability of any other entity on … such debt." *Matter of Highland Cap. Mgmt., L.P.*, 132 F.4th 353, 358 (5th Cir. 2025) citing 11 U.S.C. § 524(e); see, e.g., *In re Coho Res., Inc.*, 345 F.3d 338, 342–43 (5th Cir. 2003); *Hall v. Nat'l Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *In re Edgeworth*, 993 F.2d 51, 53–54 (5th Cir. 1993).

43. The issue in *Highland* was whether the bankruptcy court improperly used a "gatekeeper clause" to protect non-debtors from liability. This is precisely what Zachry is requesting this Court do, namely use the Plan injunction to gatekeep CECM from pursuing its claims against the Sureties in the Nebraska Litigation. As explained by the *Highland* court, except

for limited circumstances under the Barton Doctrine, which were not applicable in *Highland* and are not applicable in this case, bankruptcy courts do not have gatekeeping power over claims against non-debtors. *Id* at 359-360, *See, e.g., Villegas*, 788 F.3d at 159; *Carroll*, 788 F.3d at 505; *In re Preferred Ready-Mix, LLC*, 2024 WL 5252498, at *1 (5th Cir. Dec. 31, 2024); *In re Foster*, 2023 WL 20872, at *5 (5th Cir. Jan. 3, 2023); *In re Grodsky*, 799 F. App'x 271, 273 n.2 (5th Cir. 2020); *Baron v. Vogel*, 678 F. App'x 202, 203 (5th Cir. 2017). As the *Highland* court held, the clear weight of Supreme Court and Fifth Circuit precedent dictates that the Plan injunction cannot be used as a gatekeeper clause to protect the Sureties in the Nebraska Litigation. As admonished by the *Highland* court, any other reading of the Plan would improperly grant the bankruptcy court authority that is "beyond the power of an Article 1 court under § 105." *Id*. at 362.

d. CECM's Prosecution of the Nebraska Litigation Does Not Interfere with Implementation of the Plan.

44. First, the Nebraska Litigation involves additional claims for amounts owed to CECM that are not part of the Claim Objection, specifically, it includes unpaid post-petition claims on the Projects and claims for interest and legal fees against the Sureties that arise under Nebraska law. Accordingly, the Nebraska Litigation must be prosecuted to a final judgment and should not be stayed by this Court.

45. Second, the Plan provides for and contemplates that certain claims will be paid by "Third Parties", and states, in pertinent part:

"K. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

> "The Debtors or the Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, a Reorganized Debtor, the Distribution Agent, or the GUC Note Administrative Agent, as applicable."[18]

[18] See Dkt. #2431, pg. 125.

46. The Plan automatically allows Zachry to reduce or disallow the Claims of CECM when CECM is paid by the Sureties. Accordingly, there is no need for competing proceedings that involve the Reorganized Debtor. Moreover, Zachry's assertion that the Nebraska Litigation is causing unnecessary costs is disingenuous. CECM is the party incurring the additional costs. Notably, the Sureties are not appearing as part of the Claim Objection and are not offering to resolve CECM's claims in the Bankruptcy Court. Similarly, Zachry refuses to join the Nebraska Litigation.

47. The Sureties and Zachry are playing both sides of the coin in an attempt to gain an unfair advantage. The litigation strategy has become obvious. If the Bankruptcy Court stays the Nebraska Litigation and only allows the Claim Objection to proceed, the Sureties will argue that because they were not a party to "the claims resolution process," any findings by the Bankruptcy Court are not binding in the Nebraska Litigation or on the Sureties. Thus, CECM will still be obligated to prosecute the Nebraska Litigation to final judgment, even if CECM obtains a favorable result in the Bankruptcy Court. On the other hand, the Reorganized Debtors prefer a trial in Houston because it favors Zachry. The Project is over a thousand miles from Houston, none of the parties are based in Houston, all the witnesses, documents and other evidence is in Nebraska. CECM carries the evidentiary burden in the Claim Objection, and the burden is more difficult when the access to proof is all in Nebraska. Further, a trial in Houston is more expensive than Nebraska where the parties, the Projects and all the witnesses are located. Houston would not be an appropriate venue under the interest of justice standards adopted under 28 U.S.C. §1404.[19]

e. Judicial Resources Are Best Served By Allowing the Nebraska Litigation to Continue.

48. Discovery in the Nebraska Litigation is well underway. The lawsuit was commenced against the Sureties on August 23, 2024. The deadline to complete written discovery

[19] CECM acknowledges that change of venue for core claims is governed by 28 U.S.C.§ 1412. However, considering that neither Zachry's principal place of business nor its primary assets are located in the S.D. of Texas, traditional venue considerations are more relevant for purposes of the issues presented in the Emergency Motion.

in the Nebraska Litigation passed on March 31, 2025, and the parties have exchanged and completed written discovery requests, and Plaintiff has served its expert witness designations. Defendants' expert witness designations are (now) due May 21, 2025. The deadline to complete depositions is June 27, 2025.

49. Further, the Nebraska court is well equipped to hear this dispute. CECM is a Nebraska corporation with its principal place of business in Lincoln, Nebraska. The public project at issue was owned by a Nebraska political subdivision, OPPD, and as a result, the general contractor was required to provide a statutory payment bond in compliance with Nebraska law. Zachry continues to work on the Projects in Nebraska. The evidence is in Nebraska, including the witnesses, the architect, OPPD, and engineer. The relevant subcontracts are governed by Nebraska law; and the contract has a mandatory venue provision identifying that any dispute or proceeding be brought before a court in Omaha, Nebraska. (Ex. 2, 20.4 and 17.3, respectively).

50. CECM is aware of the strategic advantage for the Sureties to stay the Nebraska Litigation and compel CECM to travel to Houston to litigate a construction matter that has no connection to Houston or Texas law, more than a thousand miles from the place where the Project was performed and where almost all of the witnesses reside. All of the public interest factors ordinarily considered by courts support the Nebraska Litigation proceeding to trial on the merits and denial of the Emergency Motion. If Zachry's objective is to preserve resources, promote judicial economy and the interest of justice, Zachry should agree to abate the Claim Objection and join the Nebraska Litigation.

WHEREFORE, Commonwealth Electric Company of the Midwest requests that the Court deny the Reorganized Debtors' Emergency Motion, and for such other relief to which CECM may be entitled to in law or equity.

Dated: May 9, 2025

ANDREWS MYERS P.C.

/s/ T. Josh Judd
T. JOSH JUDD
SBN: 24036866
1885 Saint James Place, 15th Floor
Houston, TX 77056
Tel: 713-850-4200
Fax: 713-850-4211
jjudd@andrewsmyers.com

and

WOODS AITKEN LLP
Joel D. Heusinger, No. 18326, *admitted pro hac vice*
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jheusinger@woodsaitken.com
asvane@woodsaitken.com

COUNSEL FOR COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 9, 2025, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties requesting notice.

/s/T. Josh Judd
T. Josh Judd

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

TRAVELERS

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, 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, 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, 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

CHUBB

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, Assistant Secretary

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. 2316888
Commission Expires July 16, 2024

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, 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 A

EXHIBIT 2

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SERVICE AGREEMENT

Between:

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

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Attachment E-2	**Change Order Form**
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ZACHRY

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.

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

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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-INFRINGING, 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, CONSTRUCTOIN 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

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

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;

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 II 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.

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ZACHRY

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

ZACHRY INDUSTRIAL, INC.

By: DocuSigned 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

DocuSign Envelope ID: 7A907AA2-7974-4D27-9185-BF8283372125

ZACHRY

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.

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

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.

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

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.

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

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Name	Position	Email Address	Phone No.
Jared Gable	Foreman	jgable@commonwealthelectric.com	
Justin Wyles	General Foreman	jwyles@commonwealthelectric.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
Item	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

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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

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ATTACHMENT A

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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.

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).

PRODUCER	CONTACT NAME:
	PHONE (A/C, No, Ext): FAX (A/C, No):
	E-MAIL ADDRESS:

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ ☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	☐ POLICY ☐ PRO-JECT ☐ LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ WC STATU-TORY LIMITS ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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EXHIBIT B

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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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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.	

SAMPLE

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.

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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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ZACHRY

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

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.

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ZACHRY

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

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.

By:_____
(Signature)

Printed Name: _____

Title: _____

Date: _____

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST

By:_____
(Signature)

Printed Name: _____

Title: _____

Date: _____

DocuSign Envelope ID: 7A907AA2-7974-4D27-9185-BF8283372125

ZACHRY

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

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:_____

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ZACHRY

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

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: _____

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ZACHRY

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

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	3rd 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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ZACHRY

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

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)

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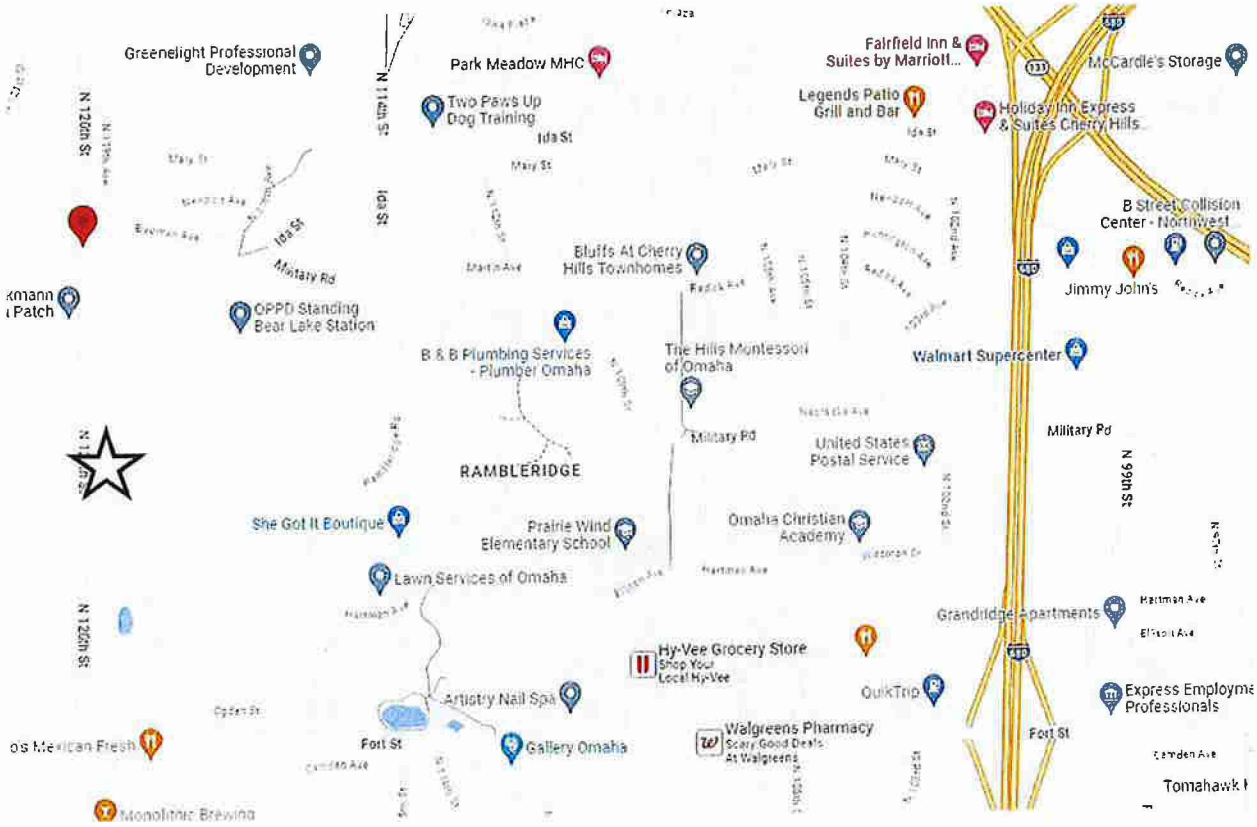
ZACHRY

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

ATTACHMENT N

MAP(S) /DIRECTIONS

6633 N. 120th Street
Omaha, NE 68164



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ATTACHMENT O

(RESERVED)

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ZACHRY

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

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.

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ZACHRY

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: DocuSigned by: Brad Reece (Signature)

Brad Reece
(Printed Name)

Title: SVP Estimating, Controls & Procurement

Date: 4/11/2024

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST

By: Neil Davidson (Signature) Digitally signed by Neil Davidson Date: 2024.04.09 16:33:42 -05'00'

Neil Davidson
(Printed Name)

Title: COO

Date: 4/9/2024

ZACHRY

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,

Lyle Fouts
EPC Project Manager
foutsl@zachrygroup.com

ZACHRY

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

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,

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 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST, a Nebraska Corporation;

Plaintiff,

vs.

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a Connecticut Corporation; and PACIFIC INDEMNITY COMPANY, a Delaware corporation;

Defendants.

4:24CV3149

FINAL PROGRESSION ORDER

IT IS ORDERED that the final progression order is as follows:

1) The trial and pretrial conference will not be set at this time. An interim status conference to discuss case progression and the parties' interest in settlement will be held with the undersigned magistrate judge on **March 4, 2025** at **2:30 p.m.** by telephone. Counsel shall use the conferencing instructions assigned to this case to participate in the conference.

2) The deadline for serving initial mandatory disclosures under Rule 26(a)(1) is November 15, 2024.

3) The deadlines for moving to amend pleadings or add parties are:

For the plaintiff(s):	December 2, 2024
For the defendant(s):	December 2, 2024

4) The deadline for completing written discovery under Rules 33, 34, 36 and 45 of the Federal Rules of Civil Procedure is March 31, 2025. Motions to

compel written discovery under Rules 33, 34, 36, and 45 must be filed by April 14, 2025.

Note: A motion to compel, to quash, or for a disputed protective order shall not be filed without first contacting the chambers of the undersigned magistrate judge to set a conference for discussing the parties' dispute.

5) The deadlines for identifying expert witnesses expected to testify at the trial, (both retained experts, (Fed. R. Civ. P. 26(a)(2)(B)), and non-retained experts, (Fed. R. Civ. P. 26(a)(2)(C)), are:

For the plaintiff(s): March 17, 2025.

For the defendant(s): April 14, 2025.

6) The deadlines for complete expert disclosures[1] for all experts expected to testify at trial, (both retained experts, (Fed. R. Civ. P. 26(a)(2)(B)), and non-retained experts, (Fed. R. Civ. P. 26(a)(2)(C)), are:

For the plaintiff(s): April 14, 2025.

For the defendant(s): May 14, 2025.

7) The deposition deadline, including but not limited to depositions for oral testimony only under Rule 45, is June 27, 2025.

a. The maximum number of depositions that may be taken by the plaintiffs as a group and the defendants as a group is 5.

b. Depositions will be limited by Rule 30(d)(1).

8) The deadline for filing motions to dismiss and motions for summary judgment is September 2, 2025.

9) The deadline for filing motions to exclude testimony on *Daubert* and related grounds is September 2, 2025.

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[1] While treating medical and mental health care providers are generally not considered "specially retained experts," not all their opinions relate to the care and treatment of a patient. Their opinion testimony is limited to what is stated within their treatment documentation. As to each such expert, any opinions which are not stated within that expert's treatment records and reports must be separately and timely disclosed.

10) Motions in limine shall be filed twenty-eight days before trial. It is not the normal practice to hold hearings on motions in limine or to rule on them prior to the first day of trial. Counsel should plan accordingly.

11) The parties shall comply with all other stipulations and agreements recited in their Rule 26(f) planning report that are not inconsistent with this order.

12) All requests for changes of deadlines or settings established herein shall be directed to the undersigned magistrate judge, including all requests for changes of trial dates. Such requests will not be considered absent a showing of due diligence in the timely progression of this case and the recent development of circumstances, unanticipated prior to the filing of the motion, which require that additional time be allowed.

Dated this 21st day of October, 2024.

BY THE COURT:

s/ Jacqueline M. DeLuca

United States Magistrate Judge

EXHIBIT 5

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

ZACHRY HOLDINGS, INC., *et al.*[1]	§	**CASE NO. 24-90377 (MI)**
	§	
DEBTORS	§	**CHAPTER 11**
	§	**(Jointly Administered)**

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST'S NOTICE OF OPT-OUT OF THIRD-PARTY RELEASES

Commonwealth Electric Company of the Midwest ("CECM"), through its undersigned counsel, respectfully files this Notice of Opt-Out of Third-Party Releases and Exculpations that may be contained within the Debtors' Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates. CECM submitted its ballot and opt-out to Verita on February 17, 2025, see attached Exhibit A. CECM opts out of all third-party releases and exculpations contained within the Plan or any order confirming the Plan and does not consent to the release or exculpation of any non-debtor party.

Respectfully submitted,

ANDREWS MYERS P.C.

/s / T. Josh Judd
T. JOSH JUDD
SBN: 24036866
1885 Saint James Place, 15th Floor
Houston, TX 77056
Tel: 713-850-4200
Fax: 713-850-4211
jjudd@andrewsmyers.com

[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.

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2025, a true and correct copy of the foregoing Notice of Opt-Out was served via the Court's Electronic Notification System on all parties entitled to such notice.

By: */s/ T. Josh Judd*
T. JOSH JUDD

EXHIBIT A

Verita (KCC) eBallot Summary

For phone assistance: Domestic (866) 381-9100 | International 001-310-823-9000

Debtor: Zachry Industrial, Inc.
District: Southern District of Texas Houston Division

Voter Certification:

Commonwealth Electric Company of the Midwest
Scott Lamoreux, Billy Friesen, Troy Deats and Neil Davidson
3910 South Street
Lincoln, NE 68506

Name of Signatory (If Other Than Voter):
Billy J. Friesen

Title:
CFO

Phone:
402-473-2203

Email:
bfriesen@commonwealthelectric.com

Signature:
Billy J. Friesen

Address or Contact Change:

Time Submitted:
2/17/2025 9:35:08 AM Pacific Time

Plan:
Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates

Class:
6 - General Unsecured Claims

Ballot Response(s):

The Holder of the Class 6 Claims listed below votes to (please check one and only one box for all Claims):

Response: Reject

Item 2 Convenience Class Election Response: (Leave blank or make a selection)

No Response

Item 3 Third-Party Release Response: (Leave blank or make a selection)

Response: Opt Out of the Third-Party Release

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

In re: ZACHRY HOLDINGS, INC., et al.,
Debtors.[1]
Chapter 11
Case No. 24-90377 (MI)
(Jointly Administered)

BALLOT FOR VOTING ON THE MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES, AND OPPORTUNITY FOR HOLDERS OF CLAIMS TO OPT OUT OF THE THIRD-PARTY RELEASE

CLASS 6 – GENERAL UNSECURED CLAIMS

THIS BALLOT SUPERSEDES ANY PREVIOUS VOTES CAST ON THE PLAN. ALL PREVIOUS VOTES SHALL NOT BE COUNTED TOWARD ACCEPTANCE OR REJECTION OF THE PLAN.

PLEASE COMPLETE AND RETURN THIS BALLOT, PURSUANT TO THE INSTRUCTIONS CONTAINED HEREIN, IF YOU WOULD LIKE TO SUBMIT A BALLOT ACCEPTING OR REJECTING THIS PLAN.

PLEASE CAREFULLY READ – YOUR RESPONSE IS REQUIRED BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON FEBRUARY 20, 2025

• PLEASE FOLLOW THE INSTRUCTIONS FOR COMPLETING THIS BALLOT RELATING TO THE *MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES* (AS MAY BE MODIFIED, AMENDED, OR SUPPLEMENTED FROM TIME TO TIME, THE "**PLAN**")[2] FOR ZACHRY HOLDINGS, INC., ET AL. (THE "**DEBTORS**") **BEFORE** COMPLETING THIS BALLOT. THIS

HOLDINGS, INC., ET AL. (THE "**DEBTORS**") **BEFORE** COMPLETING THIS BALLOT. THIS BALLOT PERMITS YOU TO VOTE ON THE PLAN (INCLUDING THE RELEASES CONTAINED IN **ARTICLE VIII** OF THE PLAN). THE PLAN IS SUBJECT TO BANKRUPTCY COURT APPROVAL.

• THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO THAT IT IS **ACTUALLY RECEIVED** BY VERITA GLOBAL, LLC (THE "CLAIMS AND NOTICING AGENT") PRIOR TO **4:00 P.M. (PREVAILING CENTRAL TIME) ON FEBRUARY 20, 2025** (THE "VOTING DEADLINE").

• PLEASE BE ADVISED THAT ARTICLE VIII OF THE PLAN CONTAINS RELEASE, EXCULPATION AND INJUNCTION PROVISIONS. THESE PROVISIONS ARE INCLUDED IN THE BALLOT. YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MAY BE AFFECTED THEREUNDER EVEN IF YOU ABSTAIN FROM VOTING. IF YOU (A) ABSTAIN FROM VOTING OR (B) VOTE TO ACCEPT OR VOTE TO REJECT THE PLAN AND, IN EACH CASE, DO NOT CHECK THE "OPT OUT" BOX BELOW, YOU SHALL BE DEEMED TO HAVE CONSENTED TO THE RELEASE PROVISIONS SET FORTH IN ARTICLE VIII.D OF THE PLAN, UNLESS YOU PROPERLY SUBMITTED AN OPT-OUT FORM DURING THE SOLICITATION OF THE DEBTORS' INITIAL PLAN OF REORGANIZATION, IN WHICH CASE SUCH OPT-OUT FORM REMAINS VALID AND EFFECTIVE .

• PLEASE BE ADVISED THAT YOUR DECISION TO OPT OUT DOES NOT AFFECT THE AMOUNT OF DISTRIBUTION YOU WILL RECEIVE UNDER THE PLAN. SPECIFICALLY, YOUR RECOVERY UNDER THE PLAN WILL BE THE SAME IF YOU OPT OUT.

• CONFIRMATION OF THE PLAN IS EXPRESSLY CONDITIONED UPON BANKRUPTCY COURT APPROVAL OF THE RELEASES BY RELEASING PARTIES (AS DESCRIBED BELOW AND LOCATED IN **ARTICLE VIII** OF THE PLAN), WHICH, IF APPROVED BY THE BANKRUPTCY COURT, WOULD PERMANENTLY ENJOIN HOLDERS OF CERTAIN CLAIMS AGAINST THIRD PARTIES FROM ASSERTING SUCH CLAIMS AGAINST SUCH NON-DEBTOR THIRD PARTIES. THE RELEASES BY RELEASING PARTIES, IF APPROVED, WILL BIND AFFECTED HOLDERS OF CLAIMS AND INTERESTS IN THE MANNER DESCRIBED IN ITEM 2 OF THIS BALLOT.

• IF THE BANKRUPTCY COURT CONFIRMS THE PLAN, IT WILL BIND YOU REGARDLESS OF WHETHER YOU HAVE VOTED.

• NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS INCLUDED IN THE MATERIALS MAILED WITH THIS BALLOT.

• IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE SUBMIT AN INQUIRY WITH THE CLAIMS AND NOTICING AGENT AT WWW.VERITAGLOBAL.NET/ZHI/INQUIRY, OR CALL (866) 479-8211 (US OR CANADA) OR +1 (781) 575-2037 (INTERNATIONAL) AND REQUEST TO SPEAK WITH A MEMBER OF THE SOLICITATION TEAM.

Please click here to view the instructions for completing the ballot.

The Debtors are soliciting votes with respect to the Plan, as set forth in the Disclosure Statement. The Debtors filed for protection under title 11 of the United States Code (the "**Bankruptcy Code**") on May 21, 2024 (the "**Petition Date**") with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") and now seek to confirm the Plan. Once completed and returned in accordance with the attached instructions, your vote on the Plan will be counted as set forth herein. Pursuant to the Bankruptcy Code, a voting class will accept the Plan if Holders of at least two-thirds in amount and more than one-half in number of Claims vote to accept the Plan. The Bankruptcy Court may confirm the Plan if the Plan otherwise satisfies the requirements of section 1129 of the Bankruptcy Code. The Plan then would be binding on all Holders of General Unsecured Claims in Class 6, among others. Subject to the terms and conditions of the Plan, you will receive the treatment identified in **Exhibit A**. **For additional discussion of your treatment and rights under the Plan, please read the Disclosure Statement and the Plan. You may wish to seek legal advice concerning the Plan.**

You have received this Ballot because you are a Holder of a Claim in Class 6 as of **January 22, 2025** (the "**Voting Record Date**") and as set forth in Item 1 of the Ballot. Accordingly, you have the right to execute this Ballot and to vote to accept or reject the Plan on account of such Claim or Claims.

The Disclosure Statement, the Plan, and certain other materials (the "**Solicitation Package**") have been served on you along with this Ballot. This Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain elections and certifications with respect thereto. If you believe you have received this Ballot in error, or if you believe that you have received the wrong Ballot, please contact the Claims and Noticing Agent immediately.

To have your vote to either accept or reject the Plan count, you must properly complete and return this Ballot so that the Claims and Noticing Agent **actually receives** it on or before the Voting Deadline. This ballot supersedes any previous votes cast on the Plan. All previous votes shall not be counted toward acceptance or rejection of the Plan.

YOUR VOTE ON THIS BALLOT WILL BE APPLIED TO EACH DEBTOR AGAINST WHICH YOU HAVE SUCH A CLAIM.

VOTING — COMPLETE THIS SECTION

Item 1. Principal Amount of Claims

Item 1. Principal Amount of Claims

The undersigned hereby certifies that, as of the Voting Record Date, the undersigned was the Holder of Claims in Class 6 as set forth below (your "**Claims**"). You must check the applicable box in the right-hand columns below to "accept" or "reject" the Plan.

Please note that you are voting all of your Claims in Class 6 either to accept or reject the Plan. You may not split your vote. If you do not indicate that you either accept or reject the Plan by checking the applicable box below, your vote will not be counted. If you indicate that you both accept and reject the Plan by checking both boxes below, your vote will not be counted.

The Plan, though proposed jointly, constitutes a separate Plan proposed by each Debtor. Accordingly, your vote cast below will be applied in the same manner and in the same amount against each applicable Debtor.

Any listing of Claims for purposes of voting on the Plan is not an admission of liability on part of the Debtors or for any other party for the purposes of ultimate allowance or distribution.

If you disagree with the Claim amount listed below for purposes of voting on the Plan, the deadline for you to file a Rule 3018 Motion for temporary allowance of your Claim in a different amount for voting purposes is **February 13, 2025 at 4:00 p.m. (prevailing Central Time)**.

The Holder of the Class 6 Claims listed below votes to (*please check one and only one box for all Claims*):
Reject

Holder Name:
Commonwealth Electric Company of the Midwest

Class 6 (General Unsecured Claims) Amount:
$4,320,691.08

Item 2. OPTIONAL: Convenience Class Election
Holders of Class 6 General Unsecured Claims may **irrevocably** elect to have their Claim treated

as a Class 5 Convenience Claim and have such Allowed General Unsecured Claim reduced to the Convenience Claim Amount ($25,000); *provided, however*, that General Unsecured Claims may not be subdivided into multiple Claims of the Convenience Claim Amount or less for purposes of receiving treatment as a Convenience Claim.

Holders of General Unsecured Claims that would like to make the optional Convenience Claim election and elect to have their Class 6 General Unsecured Claim treated as a Convenience Claim, reducing such Claim to $25,000, should check the box below.

Holders of Convenience Claims are entitled to a Cash payment in full of their Allowed Convenience Claim, on the Effective Date or as soon as practicable thereafter. Holders of Class 6 General Unsecured Claims who make the Convenience Claim election will receive $25,000 in full and final satisfaction of their Claim.

IF YOU MAKE THE CONVENIENCE CLAIM ELECTION, YOUR GENERAL UNSECURED CLAIM WILL BE CONSIDERED A CLASS 5 CONVENIENCE CLAIM AND YOUR CLAIM SHALL NOT BE ENTITLED TO ANY OTHER DISTRIBUTION OTHER THAN THE CONVENIENCE CLAIM AMOUNT. YOU MAY NOT REVOKE YOUR CONVENIENCE CLAIM ELECTION.

Item 2 Convenience Class Election Response: *(Leave blank or make a selection)*

Item 3. Important Information Regarding the Plan's Debtor Release, Third-Party Release, Exculpation, and Injunction Provisions

The Plan includes the following release, exculpation, and injunction provisions:[3]

Article VIII.C: Releases by the Debtors.

As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan, and the obligations contemplated by the Restructuring Transactions or as otherwise provided in any order of the Bankruptcy Court, and except as expressly provided in the Plan, the Schedule of Retained Causes of Action, or the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code, on and after the Effective Date, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged, by and on behalf of each Debtor and its Estate, in each case on behalf of itself and its respective successors, assigns, and representatives and any and all other Persons that may purport to assert any Cause of Action derivatively, by or through the foregoing Persons, from any and all claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors or the Estates), whether liquidated or unliquidated,

assertable on behalf of the Debtors or the Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Debtors, the Estates, or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Estates, the Chapter 11 Cases, the Restructuring Transactions, the GPX Settlement, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated under the Plan, the business or contractual arrangements or interactions between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or an Affiliate of a Debtor, the Released Avoidance Actions, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the negotiation, formulation, preparation, Filing, or consummation of the Plan, the Plan Supplement, the Confirmation Order, the Restructuring Transactions, the A&R Credit Facility, the GUC Trust, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, and all related agreements, instruments, and other documents, and the solicitation of votes with respect to the Plan, in all cases based upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in the preceding paragraph shall not release any Released Party from any Claim or Cause of Action arising from an act or omission that is determined by a Final Order to have constituted fraud, willful misconduct, or gross negligence.

Notwithstanding anything to the contrary in Article VIII.C of the Plan, the Debtors shall maintain all rights to object to Filed Claims and shall not release any claims or Causes of Action (i) identified in the Schedule of Retained Causes of Action or (ii) related to the GPX Settlement that are preserved by the GPX Settlement Documents, the GPX Settlement Dispute Opinion, or the GPX Settlement Dispute Order. Any and all such rights, claims, and Causes of Action set forth in this paragraph shall be fully preserved and revest in the Reorganized Debtors pursuant to the Plan and the Confirmation Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) essential to Confirmation of the Plan; (2) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan; (3) a good faith settlement and compromise of the Claims

released by the Debtor Release; (4) in the best interests of the Debtors and all Holders of Claims and Interests; (5) fair, equitable, and reasonable; (6) given and made after due notice and opportunity for hearing; and (7) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

Article VIII.D: Releases by Third Parties.

Except as otherwise expressly set forth in the Plan or the Confirmation Order, and except for the rights that remain in effect from and after the Effective Date to enforce the Plan, and the obligations contemplated by the Restructuring Transactions or as otherwise provided in any order of the Bankruptcy Court, on and after the Effective Date, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged, by each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives and any and all other Persons that may purport to assert any Cause of Action derivatively, by or through the foregoing Persons, in each case solely to the extent of the Releasing Parties' authority to bind any of the foregoing, including pursuant to agreement or applicable non-bankruptcy law, from any and all claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors or the Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such Holders or their estates, Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Estates, the Chapter 11 Cases, the Restructuring Transactions, the GPX Settlement, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated under the Plan, the business or contractual arrangements or interactions between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or an Affiliate of a Debtor, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the negotiation, formulation, preparation, Filing, or consummation of the Plan, the Plan Supplement, the Confirmation Order, the Restructuring Transactions, the A&R Credit Facility, the GUC Trust, the Parent Capital Contribution, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, and all related agreements, instruments, and other documents, and the solicitation of votes with respect to the Plan, in all cases based upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in the preceding paragraph shall not release any Released Party (other than a Released Party

that is a Reorganized Debtor, Debtor, or a director, officer, or employee of any Debtor as of the Petition Date), from any claim or Cause of Action arising from an act or omission that is determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the Third-Party Release.

Article VIII.E: Exculpation.

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby released and exculpated from, any Cause of Action or Claim whether direct or derivative related to any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases from the Petition Date to the Effective Date, the negotiation, formulation, preparation, Filing, or consummation of the Plan, the Plan Supplement, the Confirmation Order, the Restructuring Transactions, the A&R Credit Facility, the GUC Trust, the Parent Capital Contribution, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, all related agreements, instruments, and other documents, or any transaction related to the Restructuring Transactions, any contract, instrument, release, or other agreement or document created or entered into before or during the Chapter 11 Cases in connection with the Restructuring Transactions, any preference, fraudulent transfer, or other avoidance Claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the Filing of the Chapter 11 Cases, the solicitation of votes for the Plan, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing, except for Claims related to any act or omission that is determined in a Final Order to have constituted willful misconduct, gross negligence, or actual fraud, but in all respects such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan and the Confirmation Order.

The Exculpated Parties set forth above have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with applicable law with respect to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections

of the Plan or such distributions made pursuant to the Plan.

Article VIII.F: Injunction.

Upon entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and Affiliates, and each of their successors and assigns, shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan in relation to any Claim or Interest that is extinguished, discharged, satisfied, or released pursuant to the Plan.

Except as otherwise expressly provided in the Plan or the Confirmation Order, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been extinguished, discharged, satisfied, released, or are subject to exculpation pursuant to Article VIII, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Exculpated Parties and/or the Released Parties:

1. commencing, conducting, or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action;

2. enforcing, levying, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or Order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action;

3. creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action;

4. filing, asserting, levying, or attaching any Liens against any property of the Debtors or Reorganized Debtors on account of any Claims arising under or related to Executory Contracts or Unexpired Leases that are assumed and cured pursuant to the Plan;

5. filing, asserting, levying, or attaching any Liens against any bonds or the Sureties on account of any Claims against any of the Debtors that are discharged, satisfied, or released pursuant to the Plan, including on account of General Unsecured Claims that are satisfied in full under the Plan, and enforcing, collecting, or recovering on account of any such Liens;

6. filing, asserting, levying, or attaching any Liens against any property of Golden Pass on account of any GPX Claims against any of the Debtors that are discharged, satisfied, or released pursuant to the Plan, and enforcing, collecting, or recovering on account of any such Liens, or otherwise enforce, collect, or recover on account of any such GPX Claims against Golden Pass;

7. filing, asserting, levying, or attaching any Claims or Liens on account of GPX Claims

satisfied (or to be satisfied) by Golden Pass under the GPX Settlement, whether against the Released Parties, Exculpated Parties, Golden Pass, Chiyoda, CB&I, or CCZJV-GPX;

8. except as otherwise provided under the Plan, asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and

9. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan or the Confirmation Order.

No Person or Entity may commence or pursue a Claim or Cause of Action of any kind against the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action related to the Chapter 11 Cases prior to the Effective Date, the negotiation, formulation, preparation, Filing, or consummation of the Plan, the Plan Supplement, the Confirmation Order, the Restructuring Transactions, the A&R Credit Facility, the GUC Trust, the Parent Capital Contribution, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, the solicitation of votes with respect to the Plan, or any transaction related to the Restructuring, any contract, instrument, release, or other agreement or document created or entered into before or during the Chapter 11 Cases in connection with the Restructuring Transactions, any preference, fraudulent transfer, or other avoidance Claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing, without regard to whether such Person or Entity is a Releasing Party, without the Bankruptcy Court (1) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim of any kind and (2) specifically authorizing such Person or Entity to bring such Claim or Cause of Action against any such Debtor, Reorganized Debtor, Exculpated Party, or Released Party.

The Bankruptcy Court will have sole and exclusive jurisdiction to adjudicate the underlying colorable Claim or Causes of Action. The injunction in the Plan shall extend to any successors and assigns of the Debtors and the Reorganized Debtors and their respective property and interests in property.

Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party under the Plan, the Confirmation Order, or other document, instrument, or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan and the Confirmation Order from bringing an action to enforce the terms of the Plan, the Confirmation Order, or such document,

instrument, or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan and the Confirmation Order.

IMPORTANT INFORMATION REGARDING THE THIRD-PARTY RELEASE

Certain defined terms with respect to the Third-Party Release are set forth below:

UNDER THE PLAN, "RELEASED PARTY" MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, IN EACH CASE IN THEIR CAPACITIES AS SUCH: (A) THE DEBTORS; (B) THE REORGANIZED DEBTORS; (C) EACH MEMBER OF THE COMMITTEE; (D) THE PREPETITION CREDIT FACILITY AGENT; (E) THE A&R CREDIT FACILITY AGENT; (F) THE RELEASED PREPETITION LENDERS; (G) GOLDEN PASS, BUT SOLELY WITH RESPECT TO THE DEBTORS, THE DEBTORS' RELATED PARTIES, AND HOLDERS OF CLAIMS RELATED TO THE GPX PROJECT, CONSISTENT WITH THE GPX SETTLEMENT; (H) THE SURETIES; (I) ALL RELEASING PARTIES; AND (J) EACH RELATED PARTY OF EACH ENTITY IN CLAUSE (A) THROUGH (I); *PROVIDED, HOWEVER*, IN EACH CASE, AN ENTITY SHALL NOT BE A RELEASED PARTY IF IT (I) ELECTS TO OPT OUT OF THE THIRD-PARTY RELEASE; OR (II) FILES WITH THE BANKRUPTCY COURT AN OBJECTION TO THE PLAN, INCLUDING WITH RESPECT TO THE THIRD-PARTY RELEASE, THAT IS NOT CONSENSUALLY RESOLVED BEFORE CONFIRMATION OR OTHERWISE SUPPORTS ANY SUCH OBJECTION OR OBJECTOR.

UNDER THE PLAN, "RELEASING PARTY" MEANS, COLLECTIVELY, THE FOLLOWING ENTITIES, IN EACH CASE IN THEIR CAPACITIES AS SUCH: (A) THE DEBTORS; (B) THE REORGANIZED DEBTORS; (C) EACH MEMBER OF THE COMMITTEE; (D) THE PREPETITION CREDIT FACILITY AGENT; (E) THE A&R CREDIT FACILITY AGENT; (F) THE RELEASED PREPETITION LENDERS; (G) GOLDEN PASS, BUT SOLELY WITH RESPECT TO THE DEBTORS AND THE DEBTORS' RELATED PARTIES CONSISTENT WITH THE GPX SETTLEMENT; (H) THE SURETIES; (I) ALL HOLDERS OF CLAIMS WHO VOTE TO ACCEPT THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE THIRD-PARTY RELEASE PROVIDED BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE BALLOT INDICATING THAT THEY OPT NOT TO GRANT THE THIRD-PARTY RELEASE PROVIDED IN THE PLAN; (J) ALL HOLDERS OF CLAIMS OR INTERESTS WHO ARE DEEMED TO ACCEPT THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE THIRD-PARTY RELEASE PROVIDED BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE NOTICE OF NON-VOTING STATUS INDICATING THAT THEY OPT NOT TO GRANT THE THIRD-PARTY RELEASE PROVIDED IN THE PLAN; (K) ALL HOLDERS OF CLAIMS OR INTERESTS WHO ARE DEEMED TO REJECT THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE THIRD-PARTY RELEASE PROVIDED BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE NOTICE OF NON-VOTING STATUS INDICATING THAT THEY OPT NOT TO GRANT THE THIRD-PARTY RELEASE PROVIDED IN THE PLAN; (L) ALL HOLDERS OF CLAIMS WHO ABSTAIN FROM VOTING ON THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE THIRD-PARTY RELEASE PROVIDED BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE BALLOT INDICATING THAT THEY OPT NOT TO GRANT THE THIRD-PARTY RELEASE PROVIDED IN THE PLAN; (M) ALL HOLDERS OF CLAIMS WHO VOTE TO REJECT THE PLAN AND WHO DO NOT AFFIRMATIVELY OPT OUT OF THE THIRD-PARTY RELEASE PROVIDED

BY THE PLAN BY CHECKING THE BOX ON THE APPLICABLE BALLOT INDICATING THAT THEY OPT NOT TO GRANT THE THIRD-PARTY RELEASE PROVIDED IN THE PLAN; AND (N) EACH RELATED PARTY OF EACH ENTITY IN CLAUSE (A) THROUGH (M) FOR WHICH SUCH ENTITY IS LEGALLY ENTITLED TO BIND SUCH RELATED PARTY TO THE RELEASES CONTAINED IN THE PLAN UNDER APPLICABLE LAW; *PROVIDED, HOWEVER*, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, CURRENT EMPLOYEES OF THE DEBTORS AS OF THE VOTING RECORD DATE SHALL NOT BE RELEASING PARTIES UNDER THE PLAN.

PLEASE TAKE NOTICE THAT, IF YOU FAIL TO CHECK THE "OPT OUT" BOX BELOW, YOU WILL BE DEEMED A "RELEASING PARTY," UNLESS YOU PROPERLY SUBMITTED AN OPT-OUT FORM DURING THE SOLICITATION OF THE DEBTORS' INITIAL PLAN OF REORGANIZATION, IN WHICH CASE SUCH OPT-OUT FORM REMAINS VALID AND EFFECTIVE. AS A "RELEASING PARTY" UNDER THE PLAN, YOU WILL BE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE VIII.D OF THE PLAN, AS SET FORTH ABOVE.

YOU MAY ELECT NOT TO GRANT THE RELEASES CONTAINED IN ARTICLE VIII.D OF THE PLAN ONLY IF YOU (A) CHECK THE BOX BELOW OR (B) TIMELY FILE WITH THE BANKRUPTCY COURT ON THE DOCKET OF THE CHAPTER 11 CASES AN OBJECTION TO THE RELEASES CONTAINED IN ARTICLE VIII.D OF THE PLAN THAT IS NOT RESOLVED BEFORE CONFIRMATION, OR (C) PROPERLY SUBMITTED AN OPT-OUT FORM DURING THE SOLICITATION OF THE DEBTORS' INITIAL PLAN OF REORGANIZATION. THE ELECTION TO WITHHOLD CONSENT TO GRANT SUCH RELEASE IS AT YOUR OPTION. BY OPTING OUT OF THE RELEASES SET FORTH IN ARTICLE VIII.D OF THE PLAN, YOU WILL FOREGO THE BENEFIT OF OBTAINING THE RELEASES SET FORTH IN ARTICLE VIII OF THE PLAN IF YOU ARE A RELEASED PARTY IN CONNECTION THEREWITH.

PLEASE TAKE NOTICE THAT PARTIES RECEIVING THIS BALLOT MAY SELECT THE OPTION BELOW TO OPT OUT OF THE THIRD-PARTY RELEASE.

Item 3 Third-Party Release Response: *(Leave blank or make a selection)*
Opt Out of the Third-Party Release

PLEASE BE ADVISED THAT YOUR DECISION TO OPT OUT DOES NOT AFFECT THE AMOUNT OF DISTRIBUTION YOU WILL RECEIVE UNDER THE PLAN. SPECIFICALLY, YOUR RECOVERY UNDER THE PLAN WILL BE THE SAME IF YOU OPT OUT.

Item 4. Certification, Ballot Completion, and Delivery Instructions

By signing this Ballot, the undersigned certifies to the Bankruptcy Court and the Debtors:

a. that, as of the Voting Record Date, either: (i) the undersigned is the Holder of the Claims as set forth in Item 1; or (ii) the undersigned is an authorized signatory for an Entity that is the Holder of the Claims as set forth in Item 1;

b. that the undersigned (or in the case of an authorized signatory, the Holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;

c. that the undersigned has cast the same vote with respect to all Claims in Class 6;

d. that no other Class 6 Ballots have been cast by the undersigned or, if any other Class 6 Ballots have been cast with respect to such Claims, then any such earlier Class 6 Ballots voting those Claims are hereby revoked;

e. that the undersigned acknowledges that a vote to accept the Plan constitutes an acceptance of the treatment of the undersigned's Class 6 Claims;

f. that the undersigned understands and, if accepting the Plan, agrees with the treatment provided for its Class 6 Claims under the Plan;

g. that the undersigned acknowledges and understands that (i) if no Holders of Claims eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed to be accepted by the Holders of such Claims in such Class; and (ii) any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily allowed by the Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code; and

h. that the undersigned acknowledges and agrees that the Debtors may make conforming changes to the Plan to the extent provided by Bankruptcy Rule 3019 as may be reasonably necessary.

Name of Voter: Commonwealth Electric Company of the Midwest	Signature: Billy J. Friesen
Name of Signatory (If Other Than Voter): Billy J. Friesen	Title: CFO
Phone: 402-473-2203	Email: bfriesen@commonwealthelectric.com

Address:
Scott Lamoreux, Billy Friesen, Troy Deats and Neil Davidson, 3910 South Street, Lincoln, NE

[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.

[2] Capitalized terms used but not defined herein have the meanings given to them in the Plan.

[3] The Plan provisions referenced herein are for summary purposes only and do not include all provisions of the Plan that may affect your rights. If there is any inconsistency between the provisions set forth herein and the Plan, the Plan governs. You should read the Plan before completing this Ballot.

PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT PROMPTLY.

THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO THAT IT IS ACTUALLY RECEIVED BY THE CLAIMS AND NOTICING AGENT PRIOR TO THE VOTING DEADLINE.

The Claims and Noticing Agent's online balloting portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted via facsimile, email, or other means of electronic transmission will not be counted.

If the Claims and Noticing Agent does not actually receive this Ballot on or before February 20, 2025, at 4:00 p.m., prevailing Central Time, your vote transmitted via this Ballot may be counted toward confirmation of the Plan only in the Debtors' discretion or by order of the Court. This ballot supersedes any previous votes cast on the Plan. All previous votes shall not be counted toward acceptance or rejection of the Plan.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES FOR VOTING, PLEASE CALL THE CLAIMS AND NOTICING AGENT AT (866) 479-8211 (US OR CANADA) OR +1 (781) 575-2037 (INTERNATIONAL) OR SUBMIT AN INQUIRY AT WWW.VERITAGLOBAL.NET/ZHI/INQUIRY.

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Exhibit A

Subject to the terms and conditions of the Plan, you will receive the following treatment on account of your Class 6 Claim if the Plan is consummated, your Claim is Allowed, and you do not make the Convenience Claim election in Item 2 of your Ballot:

Class 6 - General Unsecured Claims

Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall receive, in exchange for full and final satisfaction, settlement, release, and discharge of such Claim, its Pro Rata share of the GUC Trust Interests, the economic value of which shall (i) comply with the requirements of section 1129(b)(2)(B)(i) of the Bankruptcy Code even if Class 6 votes to accept the Plan, and (ii) be equal to the Allowed amount of such Claim as of the Effective Date, plus such Holder's Pro Rata share of any accrued interest on the GUC Trust Unsecured Note; provided, however, notwithstanding anything to the contrary in the Plan, all Allowed General Unsecured Claims that are GPX Claims, to the extent not satisfied prior to the Effective Date shall be paid by Golden Pass in accordance with the terms of the GPX Settlement and the Plan.

EXHIBIT 6

From: Cole W. Mason
To: Audrey R. Svane
Cc: Connor L. Cantrell; pgh@thlf.com; Alissa A. Siron; Joel D. Heusinger
Subject: Commonwealth Electric Company of the Midwest v. Travelers et al / HLF No. 7100-217
Date: Tuesday, May 6, 2025 3:00:00 PM

Audrey,

We write to request a two-week extension, through May 28, 2025, to serve the Surety's expert report(s) in this matter. Commonwealth's expert reports raised additional issues that require supplemental investigation from our expert consultants. Further, we understand that our experts have had additional deadlines the last few weeks that have pulled attention away from this matter. Thanks in advance.

Cole W. Mason, Esq.
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A Professional Corporation
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Denver, Colorado 80237 USA
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Licensed in Colorado and Utah.

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