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

In re:	)	Chapter 11
COMPUTER SIMULATION & ANALYSIS, INC.,[1]	)	Case No. 24-90391 (MI)
Reorganized Debtor.	)	
ZACHRY HOLDINGS, INC., *et al.*,	)	
Plaintiffs,	)	Adv. Pro. No. 25-03025 (MI)
v.	)	
OMAHA PUBLIC POWER DISTRICT,	)	
Defendant.	)	

PLAINTIFFS' WITNESS AND EXHIBIT LIST FOR HEARING SCHEDULED FOR JULY 9, 2025 AT 4:00 P.M. (PREVAILING CENTRAL TIME)

The plaintiffs in the above-captioned adversary proceeding (collectively, the "**Plaintiffs**") file this Witness and Exhibit List for the hearing to be held on **July 9, 2025 at 4:00 p.m. (prevailing Central Time)** and as may be continued from time to time thereafter (the "**Hearing**"):

WITNESSES

The Plaintiffs may call any of the following witnesses at the Hearing:

[1] The last four digits of the federal tax identification number for Computer Simulation & Analysis, Inc. are 4097. The location of the Reorganized Debtor's service address in this chapter 11 case is: P.O. Box 240130, San Antonio, Texas 78224. On June 27, 2025, the Bankruptcy Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* (Case No. 24-90377 (MI), Docket No. 3178) closing the chapter 11 cases for Zachry Holdings, Inc., Zachry EPC Holdings, Inc., Zachry Engineering Corporation, ZEC New York, Inc., Zachry High Voltage Solutions, LLC, UE Properties, Inc., ZEC Michigan, Inc., Zachry Constructors, LLC, Zachry Industrial, Inc., Zachry Enterprise Solutions, LLC, Moss Point Properties, LLC, Zachry Nuclear Construction Inc., Zachry Nuclear, Inc., Zachry Nuclear Engineering, Inc., Zachry Plant Services Holdings, Inc., JVIC Fabrication, LLC, Zachry Industrial Americas, Inc., Zachry Maintenance Services, LLC, J.V. Industrial Companies, LLC, Madison Industrial Services Team, LLC (with Computer Simulation & Analysis, Inc., the "**Reorganized Debtors**").

1. Tanya Bodell (live or via declarations filed at Docket Nos. 37-9 and 53-2).

2. Lyle Fouts (live or via declarations filed at Docket No. 53-1).

3. Any witness necessary to authenticate a document.

4. Any witness called or designated by any other party in interest.

5. Any witness necessary to impeach or rebut the testimony of witnesses called or designated by any other party.

6. The Plaintiffs reserve the right to cross-examine any witness called by any other party.

EXHIBITS

The Plaintiffs may introduce the following exhibits:

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER HEARING
1.	Order (I) Approving Settlement by and Among the Debtors and Omaha Public Power District, (II) Authorizing the Debtors to Amend and Assume (as Amended) the Omaha Public Power District Contract, and (III) Granting Related Relief [Bankr. Docket No. 961]						
2.	Omaha Public Power District's Application for Allowance of Administrative Expense Claim [Bankr. Docket No. 2176]						
3.	Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates [Bankr. Docket No. 2362]						

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER HEARING
4.	Findings of Fact, Conclusions of Law, and Order (I) Approving the Debtors' Disclosure Statement on a Final Basis and (II) Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates [Bankr. Docket No. 2431] • **Exhibit A** – Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates						
5.	Debtors' Objection to Omaha Public Power District's Application for Allowance of Administrative Expense Claim [Bankr. Docket No. 2500]						
6.	Stipulation and Agreed Order Regarding Omaha Public Power District's Application for Allowance of Administrative Expense Claim the Debtor's Related Adversary Proceeding [Bankr. Docket No. 2685]						
7.	Notice of (I) Entry of Order Approving the Debtors' Disclosure Statement on a Final Basis and Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry						

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER HEARING
	Holdings, Inc. and its Debtor Affiliates and (II) Occurrence of the Effective Date [Bankr. Docket No. 2731]						
8.	Exhibit A to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Excerpts of EPC Contract (Sept. 2021)						
9.	Exhibit B to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Excerpts of Exhibit B to EPC Contract						
10.	Exhibit C to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Excerpts of Exhibit E to EPC Contract						
11.	Exhibit D to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Change Order No. 1 (Nov. 9, 2023)						
12.	Exhibit E to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Amendment No. 2 to EPC Contract (Aug. 2024)						
13.	Exhibit F to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Excerpts of OPPD 2025 Corporate Operating Plan (Dec. 19, 2024)						

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER HEARING
14.	Exhibit G to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Excerpts of OPPD Rate Fundamentals Report (Jan. 9, 2025)						
15.	Exhibit H to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Letter from OPPD's counsel to Zachry's counsel (Apr. 22, 2025)						
16.	Exhibit I to the Reorganized Debtor's Motion for Partial Summary Judgment Re: Liquidated Damages – Declaration of Tanya Bodell (Apr. 28, 2025)						
17.	Exhibit J to the Reorganized Debtor's Reply in Support of Motion for Partial Summary Judgment Re: Liquidated Damages – Declaration of Lyle Fouts (May 28, 2025)						
18.	Exhibit K to the Reorganized Debtor's Reply in Support of Motion for Partial Summary Judgment Re: Liquidated Damages – First Supplemental Declaration of Tanya Bodell (May 28, 2025)						
19.	Any document or pleading filed in the above-captioned main cases.						

EXHIBIT NO.	DESCRIPTION	MARK	OFFERED	OBJECTION	ADMITTED	W/D	DISPOSITION AFTER HEARING
20.	Any document or pleading file in the above-captioned adversary proceeding.						
21.	Any exhibit necessary for impeachment and/or rebuttal purposes.						
22.	Any exhibit identified or offered by any other party.						

RESERVATION OF RIGHTS

The Plaintiffs reserve the right to call or introduce one or more, or none, of the witnesses and exhibits listed above, and further reserve the right to supplement, modify, or amend this list prior to the Hearing.

[*Remainder of Page Intentionally Left Blank*]

Dated: July 7, 2025
Houston, Texas

/s/ Charles R. Koster

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Counsel to the Reorganized Debtors

Certificate of Service

I certify that on July 7, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

EXHIBIT 1

United States Bankruptcy Court
Southern District of Texas
ENTERED
September 17, 2024
Nathan Ochsner, Clerk

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

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

ORDER (I) APPROVING SETTLEMENT BY AND AMONG THE DEBTORS AND OMAHA PUBLIC POWER DISTRICT, (II) AUTHORIZING THE DEBTORS TO AMEND AND ASSUME (AS AMENDED) THE OMAHA PUBLIC POWER DISTRICT CONTRACT, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") for entry of an order (this "**Order**"): (i) approving the settlement by and among Debtor Zachry Industrial ("**ZII**") and Omaha Public Power District ("**OPPD**"), (ii) authorizing ZII to amend and assume (as amended) that certain *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated September 21, 2021 (as amended, the "**OPPD Contract**"), and (iii) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

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[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://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 otherwise defined herein have the meanings ascribed to them in the Motion.

and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having noted that the motion is unopposed; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The OPPD Settlement memorialized in that certain *Amendment No. 2* to the OPPD Contract attached as **Exhibit A** to this Order (the "**Amendment**") is hereby approved in all respects and shall be binding and enforceable in accordance with its terms on the Debtors, their estates, and OPPD, and each of their respective successors and assigns, in each case in accordance with the terms of the Amendment and this Order.

2. The Debtors shall provide an accounting of direct payments made to OPPD Vendors from the Retainage funds by the OPPD Escrow Account to OPPD, the Committee, and the Debtors' bank lenders on every Monday (starting with the first Monday after the payment of the first OPPD Vendor by the OPPD Escrow Account).

3. ZII is authorized to assume, and the OPPD Contract is hereby assumed, as amended pursuant to the Amendment, in its entirety pursuant to sections 105(a) and 365 of the Bankruptcy Code effective immediately upon entry of this Order.

4. ZII is authorized to cure all defaults under the OPPD Contract, which cure amount for the OPPD Contract is $0. Upon the curing of such defaults, ZII's obligations to cure any

defaults under the OPPD Contract under section 365(b)(1)(A) of the Bankruptcy Code shall be deemed satisfied.

5. Adequate assurance of future performance under the OPPD Contract to the extent required pursuant to section 365(b) of the Bankruptcy Code has been provided.

6. Upon assumption of the OPPD Contract, such contract shall be a postpetition contract of ZII, and all obligations thereunder shall be postpetition obligations of ZII.

7. Nothing contained in the Motion or this Order, nor any action taken pursuant thereto, nor any payment made pursuant to the authority granted thereby, is intended to be or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, other than the OPPD Contract; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

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

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: September 17, 2024

Marvin Isgur
United States Bankruptcy Judge

EXHIBIT A

Amendment

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408 & ALL SIMILAR PROTECTIONS

AMENDMENT NO. 2 TO
ENGINEER, PROCURE, AND CONSTRUCT CONTRACT FOR OMAHA PUBLIC POWER DISTRICT STANDING BEAR LAKE AND TURTLE CREEK GENERATING STATIONS (CONTRACT NO. 263406)

This AMENDMENT NO. 2 to Contract No. 263406 ("**Amendment No. 2**") is entered into as of this 13 day of August ("**Effective Date**"), by and between Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska ("**OPPD**"), and Zachry Industrial, Inc., a Texas corporation ("**Contractor**") (together with OPPD, the "**Parties**" or individually, a "**Party**").

WHEREAS, OPPD and Contractor are parties to that certain *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated 21 of September, 2021 (the "EPC Contract");

WHEREAS, pursuant to Article IV, Subsection (b) of the EPC Contract, OPPD withholds five percent (5%) of each Milestone Payment owed to Contractor as retainage and as of the Effective Date, OPPD is holding approximately [$20,220,446] in retainage (the "**Retainage**");

WHEREAS, Contractor and certain of its affiliates (collectively, the "**Debtors**") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas ("**Bankruptcy Court**") on May 21, 2024 (the "**Petition Date**"), which initiated the chapter 11 cases (the "**Chapter 11 Cases**") now jointly administered under lead case number 24-90377 (MI); and

WHEREAS, OPPD and Contractor desire to amend the EPC Contract as described herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties agree as follows:

1. Defined Terms. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the EPC Contract.

2. Amendment of Article IV – Contract Price, Payment. Article IV, Subsection (b) of the EPC Contract is hereby deleted in its entirety and replaced in its entirety with the following:

(b) Milestone Payments. Contractor shall submit an invoice, on the tenth (10th) day of each month, showing milestones completed and payments due for those milestones in accordance with the Milestone Payment Schedule set forth in Exhibit G. After review and approval of the invoice by OPPD, milestone payments shall be made to the Contractor in the amount of 100% of approved invoice, without withholding of retainage. Such payment shall be made approximately fifteen (15) days from receipt of the invoice. Payment of such

monthly milestone payments by the District shall not be construed or deemed to be an acceptance of the Work covered thereby.

3. Amendment of Article IV – Contract Price, Payment. Article IV of the EPC Contract is hereby amended to add the following Section (i):

(i) Contractor warrants and agrees that it has the necessary work force and resources to complete the Work, including achieving the Guaranteed Substantial Completion Dates. In an effort to expedite completion of the Work, and provided that Contractor shall assume the EPC Contract (as amended) as specified in Section 10 hereof and recommend approval of this Amendment by the Bankruptcy Court of the Southern District of Texas, the District shall remit certain "Milestone Final Completion" payments to the Contractor. These Milestone Final Completion payments are contingent on the Contractor meeting the lesser of ninety days (90) from Substantial Completion or the dates for the respective Sites listed in subsections (a) and (b) below. Failure of Contractor to meet the scheduled dates below for each individual site will result in Contractor forfeiting the additional Two Million Dollar ($2,000,000.00) payment for the respective Site set forth in this Amendment No. 2. Subject to the terms of the EPC Contract, including this Amendment No. 2, the Milestone Final Completion payments shall be adjusted as follows:

On Final Completion, the Milestone Final Completion payment shall increase by Two Million Dollars ($2,000,000.00) per site from the allotted amount set forth in the EPC Contract:

(a) SBLS will be a payment of Three Million Dollars ($3,000,000.00) if the current schedule date of March 30, 2025 is met.

(b) TCS will be a payment of Three Million Dollars ($3,000,000.00) if the current schedule date of March 16, 2025 is met.

4. Amendment of Article IV – Contract Price, Payment. Article IV of the EPC Contract is hereby amended to add Section (j), as set forth below:

(j) Release of Retainage. The following procedures shall apply to the release of the Retainage:

(i) SurTec Information Systems, Inc. shall serve as Contractor's designated third-party administrator (the "**Agent**");
(ii) Contractor shall direct Agent to establish an escrow account (the "**OPPD Escrow Account**");
(iii) Upon execution of this Amendment No. 2, OPPD shall promptly deposit the entirety of the Retainage into the OPPD Escrow Account; and
(iv) The Agent shall directly pay Subcontractors, associated with the funds held in the OPPD Escrow Account; *provided that*, OPPD shall receive

contemporaneous notice of all payments made from the OPPD Escrow Account.

5. Amendment of Article XI – Liquidated Damages. Article XI Section (f) of Amendment No. 1 to the EPC Contract is hereby deleted in its entirety, such that Article XI, Section (f) now provides in its entirety, the following:

(f) Payments for Early Completion. Provided that Zachry has successfully completed commissioning requirements per the EPC Contract, as determined by OPPD, Zachry shall be entitled to receive the following payments, to be paid within fifteen (15) days of receipt of an invoice:

(1) For SBLS, $193,548.00 per day for each calendar day before the Guaranteed Substantial Completion Date that the Work is completed. There shall be an overall cap on this compensation of $5,999,988, reflecting up to 31 calendar days.

(2) For TCS, $352,941.00 per day for each calendar day before the Guaranteed Substantial Completion Date that the Work is completed. There shall be an overall cap on this compensation of $5,999,997, reflecting up to 17 calendar days.

6. Amendment of Article XI – Liquidated Damages. Article XI, Section (b) of Amendment No. 1 to the EPC Contract, is hereby deleted in its entirety, such that Article XI, Section (b) of the Agreement now provides, in its entirety, the following:

(b) On or before August 31, 2024, EPC Contractor, OFE Suppliers and OPPD shall meet and confer regarding the status of Acceptance Tests and progress toward meeting the Guaranteed Substantial Completion Date(s), and EPC Contractor and Suppliers shall commit in writing that the Work will be completed by the Guaranteed Substantial Completion Date(s). Failure to meet the Guaranteed Substantial Completion Date(s) shall be subject to the provisions of subsection (c)(1) below. Such provisions shall be the sole and exclusive remedy for any such failure.

7. Amendment of Article XI – Liquidated Damages. Article XI, Section (c), Subsection (1) (i) and (ii) of the EPC Contract is hereby deleted in its entirety, such that Article XI, Section (c), Subsection (1) (i) and (ii) of the EPC Contract now provides, in its entirety, the following:

(1) Delay in Completion of Work

(i) If the Contractor fails to complete the Work on or before the Guaranteed Substantial Completion Date, for SBLS, as a predetermined reasonable and sole and exclusive remedy for such delay, the Contractor shall be subject to liquidated damages as follows: For each calendar day beyond the Guaranteed

Substantial Completion Date for SBLS that the Work is not completed, $350,000 per calendar day through January 29, 2025, and $500,000 per calendar day until the Work is accepted as complete. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price. If Substantial Completion has not been achieved by February 28, 2025, then on March 1, 2025, Contractor shall pay the remainder of such maximum liquidated damages applicable to SBLS.

(ii) If the Contractor fails to complete the Work on or before the Guaranteed Substantial Completion Date, for TCS, as a predetermined reasonable and sole and exclusive remedy for such delay, the Contractor shall be subject to liquidated damages as follows: For each calendar day beyond the Guaranteed Substantial Completion Date for TCS that the Work is not completed, $250,000 per calendar day, through January 15, 2025, and $400,000 per calendar day until the Work is accepted as complete. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price. If Substantial Completion has not been achieved by February 14, 2025, then on February 15, 2025, Contractor shall pay the remainder of such maximum liquidated damages applicable to TCS.

8. Revised Schedule. The Guaranteed Substantial Completion Date for SBLS shall be December 30, 2024, and the Guaranteed Substantial Completion Date for the TCS will now be December 16, 2024.

9. Waiver. Upon execution of this Amendment No. 2 and approval of the Bankruptcy Court, all OPPD's current and future Owner Furnished Equipment (OFE) backcharges will be waived and dismissed and all of Contractor's current and future Potential Change Notices (PCN's) will be waived and dismissed.

10. Assumption. Contractor shall seek Court approval to assume the Agreement (as amended by this Amendment) pursuant to Section 365 of the Bankruptcy Code. The Parties agree that all requirements for assumption of this Agreement (as amended by this Amendment) under section 365(b)(1) of the Bankruptcy Code shall be satisfied upon the Parties' entry into this Amendment No. 2. Contractor acknowledges and agrees that it shall continue to perform all obligations under the EPC Contract (as amended by Amendment No. 1 and Amendment No. 2), including achieving Substantial Completion of the SBLS and the TCS as specified in Section 8 of this Amendment No. 2.

11. Bankruptcy Court Approval and Effectiveness. This Amendment No. 2 shall be effective only upon entry of an order by the Bankruptcy Court of the Southern District of Texas approving Contractor's assumption of the EPC Contract (as amended) pursuant to section 365 of the Bankruptcy Code. Upon entry of such order by the Bankruptcy Court of the Southern District of Texas, Sections 6 and 7 of this Amendment shall take effect retroactively to the date of execution of this Amendment.

12. Effect of Amendment. Except as provided in Amendment No. 1 and this Amendment No. 2, all other terms and conditions of the EPC Contract shall remain the same and in full force and effect.

13. Counterparts. This Amendment may be executed and delivered by facsimile or other electronic means and upon such delivery the facsimile or electronic signature will be deemed to have the same effect as if the original signature had been delivered to the other Party. This Amendment may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives as of the date set forth above.

OMAHA PUBLIC POWER DISTRICT

By: _____

Title: COO

Date: 8/20/2024

ZACHRY INDUSTRIAL, INC.

By: _____

Title: President, EPC

Date: 8/14/2024

EXHIBIT 2

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

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

OMAHA PUBLIC POWER DISTRICT'S
APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Omaha Public Power District ("**OPPD**"), by and through its undersigned counsel, hereby files this *Application for Allowance of Administrative Expense Claim* (the "**Application**"). In support of the Application, OPPD respectfully represents as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to §§ 1408 and 1409.

[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. The basis for the relief requested herein are sections 105(a), 503(b)(1)(A), and 507(a)(2) of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "**Bankruptcy Code**").

PROCEDURAL BACKGROUND

3. On May 21, 2024 (the "**Petition Date**"), the above-captioned debtors (each, a "**Debtor**" and collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Bankruptcy Cases**").

4. On January 23, 2025, the Debtors filed their *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1978] (as amended, supplemented, or otherwise modified from time to time, the "**Plan**").

5. A hearing to consider confirmation of the Plan is currently docketed for February 26, 2025, at 1:30 p.m., prevailing Central Time (the "**Confirmation Hearing**").

6. The deadline for submitting applications for administrative expense priority claims in these Chapter 11 Cases has not yet occurred. Accordingly, this Application is timely filed.

FACTUAL BACKGROUND

A. The parties' agreement.

7. OPPD is a public corporation and political subdivision of the State of Nebraska that provides electricity to the Omaha, Nebraska metropolitan area and other areas in eastern Nebraska. OPPD's revenues are reinvested back into the utility and its electric system. OPPD serves approximately 1 million people in Omaha and 13 surrounding counties in southeastern Nebraska.

8. Prior to the Petition Date, OPPD and Debtor Zachry Industrial, Inc. ("**ZII**" or "**Zachry**") entered into that certain *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406)

dated September 21, 2021 (together with all exhibits, schedules, and ancillary agreements and documents thereto, the "**EPC**").[2]

9. Under the terms of the EPC, OPPD contracted with ZII to provide services for all activities associated with designing, procuring, installing, starting up, and testing two (2) power plant sites: (i) the Standing Bear Lake Station ("**SBLS**"); and (ii) the Turtle Creek Generating Station ("**TCS**"). SBLS and TCS are both located in the Omaha metropolitan area. SBLS and TCS are collectively referred to herein as the Projects.

10. The EPC was first amended in October 2023, and further amended in August 2024 pursuant to the terms of that certain *Amendment No. 2 to Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated August 13, 2024 (together with the original and continuing binding terms of the EPC, herein the "**Second Amendment**").

11. On September 17, 2024, the Court entered its *Order (I) Approving Settlement by and Among the Debtors and Omaha Public Power District, (II) Authorizing the Debtors to Amend and Assume (As Amended) the Omaha Public Power District Contract, and (III) Granting Related Relief* [Docket No. 961] (the "**Assumption Order**"). A true and correct copy of the Second Amendment is attached to the Assumption Order.

12. Under the terms of the Court's Assumption Order, ZII assumed the EPC Contract, as amended, pursuant to 11 U.S.C. § 365, and the terms of the Second Amendment were approved by the Court. Specifically, under Paragraph 6 of the Court's Assumption Order, the Second

[2] The EPC is voluminous. A true and correct copy of the EPC will be made available upon any reasonable and appropriate request, subject to OPPD's rights to redact any terms therein and/or rights to seek a protective order and/or nondisclosure agreement to ensure any proprietary terms of the EPC remain confidential.

Amendment is expressly identified as a postpetition contract of ZII, and all obligations thereunder are deemed postpetition obligations of ZII. *See* Assumption Order at ¶ 6, p. 3.

13. It is important to understand the motivating factors that prompted the need for the Second Amendment to the EPC. As of August 2024, Zachry was already more than 15 months late on its completion for SBLS and 11 months late on its completion for TCS. In critical need to have the stations operating as quickly as possible to meet the needs of its growing customer load, OPPD agreed to provide a financial incentive to expedite Zachry's completion of the two power stations. The performance incentive enumerated in the Second Amendment provided Zachry with the opportunity to receive approximately $12 Million in additional payment ("**Completion Bonus**") for timely compliance with the now ***extended*** completion date of the two power stations. The Completion Bonus, which was not agreed to in original EPC, was offered by OPPD in an effort to motivate Zachry to finally achieve completion of the projects. Despite the Completion Bonus, Zachry has (once again) failed to meet the revised completion dates.

B. ZII's breaches of the Amended EPC.

14. Subsequent to the entry of the Court's Assumption Order, ZII materially breached—and remains in breach of—the terms of the Second Amendment. Specifically, as of the date of this Application, ZII is currently in default as a result of the following (collectively, the "**Breaches**"):[3]

i. ZII's continued failure to achieve the "**Guaranteed Substantial Complete Date**" (as defined in the Second Amendment) of December 16, 2024, for the TCS, pursuant to the Second Amendment; and

ii. ZII's continued failure to achieve the Guaranteed Substantial Complete Date of December 30, 2024, for the SBLS, pursuant to the Second Amendment.

[3] There may be additional breaches by the Debtors under the terms of the Amended EPC. OPPD reserves all rights and does not waive any breaches by not explicitly referencing the same in this Application.

15. To be clear, ZII's Breaches occurred, arose, or otherwise originally came into existence between the post-Petition Date and pre-Plan Effective Date time period. As of the date of this Application, ZII's Breaches remain uncured and are continuing daily.

16. As a direct result of the Breaches, OPPD has sustained damages and OPPD's liquidated damages pursuant to the terms of the Second Amendment are accruing daily.

17. More specifically, as of the date of this Application, the liquidated damages due and owing to OPPD under the Second Amendment are not less than Thirty-eight Million Dollars ($38,000,000.00). Due to the nature of the ongoing existence of ZII's Breaches, the calculation of liquidated damages due and owing to OPPD under the Second Amendment continues to accrue daily. Accordingly, OPPD reserves all rights to supplement, amend, and modify this Application with additional quotes of the liquidated damages due and owing to OPPD under the Second Amendment.

18. The liquidated damages quoted in this Application are calculated as follows:

i. Turtle Creek Station = $19,500,000.00

   a. $250,000 per day from December 16, 2024, through January 15, 2025; and

   b. $400,000 per day after January 15, 2025, until completion (subject to 10% cap of total Contract Price).[4]

ii. Standing Bear Lake Station = $18,500,000.00

   a. $350,000 per day from December 31, 2024, through January 29, 2025; and

   b. $500,000 per day after January 29, 2025, until completion (subject to 10% cap of total Contract Price).

19. The amounts calculated hereinabove were explicitly agreed to by Zachry and approved by the Court in the Assumption Order approving the Second Amendment.

[4] As defined in the Second Amended EPC.

20. Pursuant to the EPC and the Second Amendment, if Zachry fails to reach substantial completion of TCS by February 14, 2025, and of SBLS by February 28, 2025, respectively, Zachry will be obligated to pay the remainder of the maximum liquidated damages, totaling fifteen percent (15%) of the total EPC contract price.

21. OPPD has completely and fully performed all its obligations under the terms of the EPC, as amended.

22. Accordingly, OPPD respectfully submits this Application seeking an order from the Court liquidating its allowed administrative expense priority claim under 11 U.S.C. § 503(b) in an amount equal to the damages due and owing to OPPD under the terms of the Second Amendment directly arising from ZII's Breaches, including (without limitation) all liquidated damages accrued under the Second Amendment.

C. The underlying Adversary Proceeding.

23. On February 5, 2025, Debtor Zachry Holdings, Inc. ("**ZHI**") filed a lawsuit against OPPD seeking declaratory relief that no damages are due from the Debtors under the Second Amendment. ZHI affirmatively acknowledges (although disputed) that any post petition breaches under the Second Amendment would entitle OPPD to an administrative expense claim for the liquidated damages accruing thereunder. In an effort to prematurely cut off any such claim, ZHI has initiated its adversary case against OPPD in an attempt to preempt the very claim that is the subject of this timely Application.

24. The lawsuit is currently pending before the Court at Adversary Number 25-03025 (the "**Adversary Proceeding**"). OPPD's responsive pleading deadline is March 7, 2025. OPPD intends to assert any and all applicable defenses, affirmative defenses, counterclaims, cross claims, dispositive motions, any available pretrial motions, and all other rights and remedies available. OPPD reserves all rights in this regard.

25. The Adversary Proceeding is particularly troubling to OPPD. When looking at the big picture here, OPPD voluntarily forbore from enforcing its rights under the EPC after Zachry was many months delinquent on completing the SBLS and TCS power stations. OPPD desired to work with Zachry in good faith and provided Zachry multiple chances to efficiently complete the SBLS and TCS power stations without the need for enforcement actions. Specifically, OPPD voluntarily elected: (i) not to pursue collection under the surety bond guaranteeing Zachry's payment and performance under the EPC;[5] (ii) to provide Zachry with additional time (16+ months past the original completion dates); and (iii) to provide Zachry with additional money to complete the work. Despite these contractual accommodations, and after missing the revised completion dates, Zachry prematurely filed the Adversary Proceeding claiming that the liquidated damages triggered by Zachry's default are not legitimate—damages that Zachry explicitly agreed to and are explicitly approved by the Court's Assumption Order.

RELIEF REQUESTED

26. OPPD respectfully requests that this Court enter an order (a) granting this Application; (b) allowing OPPD an administrative expense claim pursuant to section 503(b)(1)(A) of the Bankruptcy Code for any and all damages (whether liquidated, actual or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC Contract, as amended, occurring after the Petition Date and prior to the Plan's Effective Date (including, without limitation, the Breaches specifically identified herein); and (c) ordering that OPPD's allowed administrative expense claim be granted priority payment and distribution under

[5] OPPD reserves all rights to enforce the surety bonds under the terms of the EPC at any time. OPPD does not waive any rights by previously voluntarily electing to delay enforcement of the surety bond.

section 507(a)(2) of the Bankruptcy Code *pari passu* with all other administrative expense priority claims of the same class and priority in accordance with the Plan's terms.

BASIS FOR RELIEF

27. Section 503(b) of the Bankruptcy Code provides for the priority payment of certain enumerated categories of allowable administrative expenses. *See* 11 U.S.C. § 503(b). "[A]dministrative priority encourages third parties to provide goods and services to the debtor-in-possession so that it may continue its business and generate funds with which to pay prepetition creditors." *In re Talen Energy Supply, LLC*, No. 22-90054, 2023 WL 2816683, at * 4 (Bankr. S.D. Tex. Apr. 6, 2023). "Consistent with that policy, administrative expenses under § 503(b)(1)(A) include 'the actual, necessary costs and expenses of preserving the estate.'" *Id.* (internal quotation omitted in original). To qualify as "actual and necessary," the claim "must have arisen post-petition and as a result of actions taken by the trustee that benefitted the estate." *Id.* (quoting *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001)). Further, "the goods or services must have been delivered or provided pursuant to a post-petition transaction." *Id.* Stated differently, "[t]o qualify as an actual and necessary cost under section 503(b)(1)(A), a claim against the estate (1) must have arisen postpetition (2) as a result of actions taken by the trustee or debtor-in-possession that benefited the estate." *In re GGI Holdings, LLC*, 665 B.R. 727, 780 (Bankr. N.D. Tex. 2024) (citing *Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*, 931 F.3d 432, 441 (5th Cir. 2019)).

28. Indeed, "[s]ection 503 requires that such claims be given priority, therefore inducing third parties to extend credit and enhancing the likelihood of a successful reorganization." *In re TransAmerican Nat. Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992) (quoting *In re Coastal Carriers Corp.*, 128 B.R. 400, 403 (Bankr. D. Md. 1991)).

29. "As a general matter, if a trustee enters into a contract after the order for relief and subsequently breaches the contract, the other party will have a claim for damages, and the full amount of those damages arising from the trustee's breach—as determined under the contract—will constitute an administrative expense." *In re GGI Holdings, LLC*, 665 B.R. at 780. If the damages incurred or acts giving rise to liability took place after the petition date but before plan confirmation, the claim arises post-petition for purposes of administrative priority. *See id.* at 781; *see also Pension Benefit Guar. Corp. v. Sunarhauserman, Inc. (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 818 (6th Cir. 1997) ("Thus, regardless of the substantive law on which the claim is based, the proper standard for determining that claim's administrative priority looks to when the acts giving rise to a liability took place, not when they accrued.").

30. For example, in *In re GGI Holdings, LLC*, the Bankruptcy Court granted administrative expense claim status to a purchaser's claim arising from the debtor's breach of warranties under an asset purchase agreement (APA). *In re GGI Holdings, LLC*, 665 B.R. at 781. There, the debtor failed to disclose a significant long-term merchandising license agreement in the final disclosure schedules attached to the APA. *Id.* at 734. The court found that this omission constituted a breach of the APA's warranties, which led to substantial damages for the purchaser, including legal fees and settlement costs incurred to resolve a lawsuit related to the undisclosed license agreement. *Id.* at 781. The court reasoned that because the breach occurred post-petition and arose from the debtor's conduct in connection with the sale of estate assets, the claim qualified as an administrative expense under 11 U.S.C. § 503(b)(1)(A), as it was an actual and necessary cost of preserving the estate. *Id.*

31. Similarly, under the Court's Assumption Order, the EPC, as amended, is explicitly a "*postpetition contract of ZII*" and "*all obligations thereunder shall be postpetition obligations of*

ZII." *See* Assumption Order at ¶ 6, p. 3. Likewise, the Debtors' Breaches all took place after the Petition Date but before the Plan's Effective Date. Accordingly, under the authority cited herein, OPPD's claim for damages is deemed to arise post-petition for purposes of administrative priority. *See, e.g., In re GGI Holdings, LLC*, 665 B.R. at 781; *see also see also In re Sunarhauserman, Inc.*, 126 F.3d at 818.

32. In the Adversary Proceeding, the Debtors explicitly acknowledge (although disputed) that any breaches under the Second Amendment would create an administrative expense priority claim in favor of OPPD. *See* Adversary Compl. at ¶¶ 13, 14, 15, 20, 76, 77, 78.

33. Accordingly, OPPD should be granted an administrative expense claim for all damages (whether liquidated, actual, or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC, as amended, occurring after the Petition Date and prior to the Plan's Effective Date (including, without limitation, the Breaches specifically identified herein).

RESERVATION OF RIGHTS

34. OPPD reserves the right to amend, modify, and/or supplement this Application, including (without limitation) the allowance and payment of an administrative expense priority claim under 11 U.S.C. § 503(b) for any and all damages (whether liquidated, actual, or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC, as amended, occurring after the Petition Date and prior to the Plan's Effective Date (including, without limitation, the Breaches specifically identified herein). Any and all such amendments, modifications, or supplements shall relate back to the date of this timely filed Application. OPPD reserves all rights to present any arguments, legal authorities, and/or evidence

within this proceeding for the purposes of supporting this Application and responding to any allegations by any party related hereto.

35. Any and all proceedings in the Adversary Proceeding are without prejudice to OPPD's rights asserted in this Application and the terms of the Plan. OPPD expressly reserves all such rights. OPPD reserves all rights under the EPC and all amendments and ancillary documents and agreements thereto, including (without limitation) the Second Amendment.

36. As of the date of this Application, OPPD's administrative expense claim for ZII's Breaches is disputed, contingent, and unliquidated. However, the Breaches currently exist, and as such, this Application is timely preserved for future liquidation of OPPD's administrative expense claim within the procedural parameters of the Plan, Confirmation Hearing, putative Effective Date, and Adversary Proceeding.

CONCLUSION

WHEREFORE, OPPD respectfully requests that the Court enter an order: (a) allowing OPPD an administrative expense claim pursuant to section 503(b)(1)(A) of the Bankruptcy Code for any and all damages (whether liquidated, actual, or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC, as amended, occurring after the Petition Date and prior to the Plan's Effective Date (including, without limitation, the Breaches specifically identified herein); (b) recognizing that such administrative expense claim is entitled to *pari passu* priority distribution and payment under section 507(a)(2) of the Bankruptcy Code with all other administrative expense claims of the same class and priority in compliance with the terms of the Plan; and (c) granting such other and further relief as may be just and proper under the circumstances (including, without limitation, the preservation for future liquidation and allowance of OPPD's currently disputed, unliquidated, and contingent administrative expense

priority claim arising from the Debtors' breaches of the EPC, as amended, after the Petition Date and prior to the Plan's Effective Date).

DATED: February 14, 2025

Respectfully submitted by:

/s/ Thomas C. Scannell

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ATTORNEYS FOR OMAHA PUBLIC POWER DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that, on February 14, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Thomas C. Scannell
Thomas C. Scannell

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

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

ORDER GRANTING OMAHA PUBLIC POWER DISTRICT'S
APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

Upon consideration of *Omaha Public Power District's Application for Allowance of Administrative Expense Claim* (the "**Application**")[2] filed by Omaha Public Power District ("**OPPD**"); and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and all objections, if any, to the Application having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing, therefor, it is **HEREBY ORDERED THAT**:

[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 otherwise defined herein shall have the meanings ascribed to them in the Application.

1. The Application is **GRANTED**.

2. Pursuant to 11 U.S.C. § 503(b)(1)(A), OPPD is granted an administrative expense claim in an amount not less than $38,000,000.00, as of the date of the Application, plus additional accruals of daily liquidated damages as set forth in the Second Amendment to the EPC ("**Administrative Expense Claim**").

3. Pursuant to 11 U.S.C. § 507(a)(2), OPPD's Administrative Expense Claim is entitled to administrative expense priority payment and shall be paid at such time as and in a manner consistent with the payment of similarly situated administrative expense claims in the Bankruptcy Cases.

4. The relief granted via this Order is without prejudice to OPPD's ability to seek additional administrative expense claims against any of the Debtors or other proofs of claim filed by OPPD in the Bankruptcy Cases.

5. Any stay of this Order under Rule 4001 of the Federal Rules of Bankruptcy Procedure or any similar rule is hereby waived for cause, and this Order shall be effective immediately upon entry on the Bankruptcy Court's docket.

6. This Bankruptcy Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

_____

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 3

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

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

FURTHER MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES

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Counsel to the Debtors and Debtors in Possession

Dated: February 23, 2025
Houston, Texas

[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.

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INTRODUCTION

Zachry Holdings, Inc. and the other above-captioned debtors and debtors in possession (collectively, the "**Debtors**") propose this Plan for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in **Article I.A** of this Plan. Although proposed jointly for administrative purposes, this Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Holders of Claims against or Interests in the Debtors may refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of this Plan, the Restructuring Transactions, and certain related matters. The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THIS PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "A&R Credit Facility" means the Prepetition Credit Facility as amended and restated in accordance with the terms of this Plan and the A&R Credit Facility Documents.

2. "A&R Credit Facility Agent" means the Prepetition Credit Facility Agent, in its capacity as administrative agent under the A&R Credit Facility.

3. "A&R Credit Facility Documents" means any documents governing the A&R Credit Facility, including the A&R Credit Facility Term Sheet, the Exit Intercreditor Agreement, and any amendments, modifications, and supplements thereto, and together with any related commitments, notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith.

4. "A&R Credit Facility Lenders" means, collectively, the lenders under the A&R Credit Facility.

5. "A&R Credit Facility Term Sheet" means the term sheet describing the material terms of the A&R Credit Facility, attached as Schedule 1 to Exhibit A of the *Notice of Filing of the Third Plan Supplement* [Docket No. 2316].

6. "Administrative Claim" means a Claim for costs and expenses of administration of the Estates under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the Chapter 11 Cases; (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; and (d) Adequate Protection Superpriority Claims (as defined in the Cash Collateral Order).

7. "Affiliate" means, with respect to any Entity, all Entities that would fall within the definition assigned to such term in section 101(2) of the Bankruptcy Code if such Entity was a debtor in a case under the Bankruptcy Code.

8. "Allowed" means, with respect to any Claim or Interest, a Claim or an Interest expressly allowed under the Plan, under the Bankruptcy Code, or by a Final Order, as applicable.

9. "Assumption List" means the list of Executory Contracts and Unexpired Leases that shall be assumed by the Debtors pursuant to the Plan attached as Exhibit B to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150] and as may be amended from time to time.

10. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

11. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas.

12. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

13. "Bar Date" means the applicable deadline set by the Bankruptcy Court pursuant to this Plan, the Bar Date Order, or other Final Order by which Proofs of Claim must be filed with respect to a Claim.

14. "Bar Date Order" means the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 636].

15. "Business Day" means any day, other than a Saturday, Sunday, or "legal holiday" (as such term is defined in Bankruptcy Rule 9006(a)).

16. "Cash" means cash and cash equivalents, including bank deposits, checks, and other similar items in legal tender of the United States of America.

17. "Cash Collateral" has the meaning set forth in section 363(a) of the Bankruptcy Code.

18. "Cash Collateral Order" means either a further interim or final cash collateral order, based upon the *Seventh Interim Order (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 2135].

19. "Cause of Action" means, without limitation, any Claim, Interest, claim, damage, remedy, cause of action, controversy, demand, right, right of setoff, action, cross claim, counterclaim, recoupment, claim for breach of duty imposed by law or in equity, action, Lien, indemnity, contribution, reimbursement, guaranty, debt, suit, class action, third-party claim, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, direct or indirect, choate or inchoate, liquidated or unliquidated, suspected or unsuspected, disputed or undisputed, secured or unsecured, assertable or existing directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, statutory or otherwise, under the Bankruptcy Code or applicable non-bankruptcy law, or pursuant to any other theory of law. For the avoidance of doubt, Causes of Action include: (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, or 553 of the Bankruptcy Code or similar non-U.S. or state law; and (d) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

20. "CB&I" means CB&I LLC, a wholly owned subsidiary of McDermott International, Inc.

21. "CCZJV-GPX" means the hybrid joint venture between ZII, CB&I, and Chiyoda with respect to the GPX Project.

22. "Chapter 11 Cases" means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all the Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

23. "Chiyoda" means Chiyoda International Corporation.

24. "Claim" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

25. "Claims and Noticing Agent" means Verita Global, LLC, formerly known as Kurtzman Carson Consultants, LLC, as claims, noticing, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

26. "Claims Objection Deadline" means ninety (90) calendar days after the Effective Date, subject to extension as set forth in **Article VII.A** hereof.

27. "Claims Register" means the official register of Claims against and Interests in the Debtors maintained by the Claims and Noticing Agent.

28. "Class" means a class of Claims or Interests as set forth in **Article III** hereof pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

29. "CM/ECF" means the Bankruptcy Court's Case Management and Electronic Case Filing system.

30. "Committee" means the Statutory Unsecured Claimholders' Committee, appointed by the U.S. Trustee pursuant to section 1102 of the Bankruptcy Code on June 4, 2024 [Docket No. 176] and reconstituted by the U.S. Trustee on January 27, 2025 [Docket No. 2003].

31. "Confirmation" means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases.

32. "Confirmation Date" means the date upon which the Bankruptcy Court confirms this Plan pursuant to section 1129 of the Bankruptcy Code.

33. "Confirmation Hearing" means the hearing held by the Bankruptcy Court on the confirmation of this Plan, pursuant to Bankruptcy Rule 3020(b)(2) and sections 1128 and 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

34. "Confirmation Order" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, which shall be in form and substance reasonably satisfactory to the Debtors and the Committee and consistent in all material respects with the terms and conditions of the Plan.

35. "Consummation" means the occurrence of the Effective Date.

36. "Convenience Claim" means any Claim that would otherwise be a General Unsecured Claim that is (a) Allowed in the Convenience Claim Amount or less, or (b) irrevocably reduced to the Convenience Claim Amount at the election of the Holder of an Allowed General Unsecured Claim as evidenced on the ballot timely and validly submitted by such Holder, pursuant to the solicitation procedures approved under the Disclosure Statement Order; *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.

37. "Convenience Claim Amount" means $25,000.00.

38. "Cure Claim" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor's defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365

of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

39. "Debtor Release" means the release set forth in **Article VIII.C** of this Plan.

40. "Debtors" has the meaning set forth in the introduction hereof.

41. "Deferred Compensation Plan" means the supplemental non-qualified deferred compensation plan providing tax deferred income for certain employees of the Debtors.

42. "Deferred Compensation Plan Claims" means any Claim against any Debtor derived from, based upon, or arising under the Deferred Compensation Plan.

43. "Disallowed" means, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtors which: (i) has been disallowed, in whole or in part, by a Final Order; (ii) has been withdrawn by agreement of the Holder thereof and the Debtors or Reorganized Debtors in whole or in part; (iii) has been withdrawn, in whole or in part, by the Holder thereof; (iv) if listed in the Schedules as zero or as Disputed, contingent, or unliquidated and in respect of which a Proof of Claim or a proof of Interest, as applicable, has not been timely filed or deemed timely filed pursuant to this Plan, the Bankruptcy Code, any Final Order, or other applicable law; (v) has been reclassified, expunged, subordinated, or estimated to the extent that such reclassification, expungement, subordination, or estimation results in a reduction in the filed amount of any Proof of Claim or proof of Interest; (vi) is evidenced by a Proof of Claim or a proof of Interest which has been filed, or which has been deemed to be filed under applicable law or order of the Bankruptcy Court, or which is required to be filed by order of the Bankruptcy Court, but as to which such Proof of Claim or proof of Interest was not timely or properly filed; (vii) is unenforceable to the extent provided in sections 502(b) or 502(e) of the Bankruptcy Code, including because such Claim asserts a right of reimbursement or contribution that is contingent as of the Effective Date; or (viii) subject to the Debtor Release, where the holder of a Claim is a Person or Entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, unless such Person, Entity or transferee has paid the amount, or turned over any such property, for which such Person, Entity, or transferee is liable under sections 522(i), 542, 543, 550, or 553 of the Bankruptcy Code. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination, or estimation.

44. "Disclosure Statement" means the disclosure statement in respect of this Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

45. "Disclosure Statement Order" means one or more orders entered by the Bankruptcy Court: (i) finding that the Disclosure Statement (including any amendment, supplement, or modification thereto) contains adequate information pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, and (ii) authorizing the use of the Disclosure Statement for soliciting votes on the Plan.

46. "Disputed" means, as to a Claim or an Interest, a Claim or an Interest that is (a) neither Allowed nor Disallowed under this Plan or a Final Order, nor deemed Allowed under sections 502, 503, or 1111 of the Bankruptcy Code; (b) subject to an objection or a request for estimation Filed by the Claims Objection Deadline by any party in interest, and such objection or request for estimation has not been withdrawn or determined by a Final Order; or (c) is contingent or unliquidated and not otherwise Allowed by a Final Order.

47. "Distribution Agent" means the Reorganized Debtors or the Entity or Entities selected by the Debtors or the Reorganized Debtors, as applicable, to make or facilitate distributions pursuant to this Plan for all Claims other than General Unsecured Claims.

48. "Distribution Record Date" means the record date for purposes of making distributions under this Plan on account of Allowed Claims, which shall be the Effective Date.

49. "Effective Date" means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions precedent to the occurrence of the Effective Date set forth in **Article IX.A** of this Plan have been satisfied or waived in accordance with **Article IX.B** of this Plan. Any action to be taken on the Effective Date may be taken on the Effective Date or as soon as reasonably practicable thereafter.

50. "Employee Obligations" means any existing obligations to employees, independent contractors, and retirees of the Debtors to be assumed, Reinstated, or honored, as applicable, in accordance with **Article IV.L** of this Plan, including the Deferred Compensation Plan.

51. "Entity" means any entity, as defined in section 101(15) of the Bankruptcy Code.

52. "Equity Security" means any equity security, as defined in section 101(16) of the Bankruptcy Code, in a Debtor.

53. "Estate" means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

54. "Exculpated Parties" means, collectively, and in each case in its capacity as such, the Debtors, the Committee, and each member of the Committee.

55. "Executory Contract" means a contract to which one or more of the Debtors are a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

56. "Exit Intercreditor Agreement" means that certain junior lien intercreditor agreement (which shall be consistent in all material respects with the terms set forth in the term sheet attached as **Exhibit B** to the Confirmation Order), by and among the A&R Credit Facility Agent, as agent under the A&R Credit Facility, Sunbelt, as lender under the Sunbelt Promissory Note and the GUC Note Collateral Agent, as collateral agent under the GUC Note, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

57. "Federal Judgment Rate" means the federal judgment rate in effect as of the Petition Date.

58. "File" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases. "Filed" and "Filing" shall have correlative meanings.

59. "Final Order" means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, that has not been reversed, stayed, modified, or amended and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing has been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided*, *however*, for the avoidance of any doubt, an order or judgment that is subject to appeal shall not constitute a Final Order even if a stay of such order or judgment pending resolution of the appeal has not been obtained; *provided*, *further*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order will not preclude such order from being a Final Order.

60. "General Unsecured Claim" means any Unsecured Claim against the Debtors that is not: (a) an Administrative Claim; (b) a Professional Fee Claim; (c) a Priority Tax Claim; (d) a Restructuring Expense; (e) an Other Priority Claim; (f) a Deferred Compensation Plan Claim; (g) a Convenience Claim; or (h) an Intercompany Claim. For the avoidance of doubt, General Unsecured Claims include (x) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (y) Claims resulting from litigation against one or more of the Debtors, arising prior to the Petition Date.

61. "Golden Pass" means Golden Pass LNG Terminal LLC, f/k/a Golden Pass Products LLC.

62. "Governing Body" means, in each case in its capacity as such, the board of directors, board of managers, manager, managing member, general partner, investment committee, special committee, or such similar governing body of any of the Debtors or the Reorganized Debtors, as applicable.

63. "Governmental Unit" means any governmental unit, as defined in section 101(27) of the Bankruptcy Code.

64. "GPX Administrative Claims" means GPX Claims for amounts due in connection with the GPX Project incurred by ZII between May 21, 2024 and July 25, 2024 that constitute Administrative Claims.

65. "GPX Claims" means Claims for ZII's obligations to vendors and subcontractors (including ZII's share of Pool A and Pool B obligations of CCZJV-GPX and MZJV-GPX, respectively, but excluding obligations to ZII and its affiliates) for amounts validly due for goods and/or services in respect of the GPX Project.

66. "GPX Direct Payment Cap" means the Direct Payment Cap (as defined in the GPX Settlement Documents).

67. "GPX Excess Claims Stipulation" means the joint stipulation of facts and agreed determination between the Debtors and Golden Pass determining the amount of Excess Claims (as defined in the GPX Settlement Term Sheet, attached as Exhibit A to the GPX Interim Settlement Order) under the GPX Settlement, attached as Exhibit G to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150].

68. "GPX Final Settlement Order" means the *Final Order (I) Approving the Settlement By and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV (II) Authorizing the Parties to Perform Any and All Obligations Contemplated By the Settlement, and (III) Granting Related Relief* [Docket No. 744].

69. "GPX Interim Settlement Order" means the *Interim Order (I) Approving the Settlement By and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV (II) Authorizing the Parties to Perform Any and All Obligations Contemplated By the Settlement, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket Nos. 610 (Sealed); 625 (Redacted)].

70. "GPX L/C" means the *Irrevocable Standby Letter of Credit*, No. 3139428, dated February 25, 2019, as amended, issued by the GPX L/C Issuer.

71. "GPX L/C Issuer" means the Prepetition Credit Facility Agent.

72. "GPX L/C Permitted Draws" means Golden Pass's right, pursuant to the terms of the GPX Settlement, to make the GPX L/C Scheduled Draws; *provided*, *however*, that pursuant to **Article IV.B** hereof and the GPX Excess Claims Stipulation, the Debtors may wire Cash to Golden Pass in the amount of each Scheduled Draw on or before the date each Scheduled Draw is due under the GPX Settlement, in lieu of Golden Pass making each Scheduled Draw against the GPX L/C.

73. "GPX L/C Scheduled Draws" means Golden Pass's right to draw on the GPX L/C in specified amounts on specified dates in accordance with the GPX Settlement; *provided*, *however*, that pursuant to **Article IV.B** hereof and the GPX Excess Claims Stipulation, the Debtors may wire Cash to Golden Pass in the amount of each Scheduled Draw on the date each Scheduled Draw is due under the GPX Settlement, in lieu of Golden Pass making each Scheduled Draw against the GPX L/C.

74. "GPX Parent Guarantee" means that certain guarantee executed by ZHI in favor of Golden Pass (as amended, supplemented, or otherwise modified), related to the GPX Project.

75. "GPX Project" means the Golden Pass liquefied natural gas project under construction in Sabine Pass, Texas.

76. "GPX Settlement" means the settlement among the GPX Settlement Parties resolving disputes related to the GPX Project, as set forth in the GPX Settlement Documents, and approved on a final basis under the GPX Final Settlement Order.

77. "GPX Settlement Dispute Opinion" means the *Memorandum Opinion* [Docket No. 1266], dated October 29, 2024.

78. "GPX Settlement Dispute Order" means the *Order* [Docket No. 1267], dated October 29, 2024.

79. "GPX Settlement Documents" means, collectively, the GPX Final Settlement Order, the GPX Interim Settlement Order, the GPX Settlement Term Sheet (attached as Exhibit A to the GPX Interim Settlement Order), the Confidential Settlement Agreement and Release in Connection with the Settlement Term Sheet [Docket No. 739], the GPX Excess Claims Stipulation, and all ancillary documents contemplated by and related to the foregoing documents.

80. "GPX Settlement Parties" means the Debtors, Golden Pass, CCZJV-GPX, CB&I, and Chiyoda.

81. "GUC Note Administrative Agent" means, solely in its capacity as such, an Entity selected by the Committee, reasonably acceptable to the Debtors, to serve as the administrative agent of the GUC Promissory Notes, and any successor thereto, on behalf of the Holders of Allowed General Unsecured Claims in accordance with the GUC Note Documents. The identity of the initial GUC Note Administrative Agent shall be disclosed at or prior to the Confirmation Hearing.

82. "GUC Note Collateral Agent" means, solely in its capacity as such, an Entity selected by the Committee and reasonably acceptable to the Debtors, to serve as the collateral agent of the GUC Promissory Notes, and any successor thereto, on behalf of the Holders of Allowed General Unsecured Claims in accordance with the GUC Note Documents. The identity of the initial GUC Note Collateral Agent shall be disclosed at or prior to the Confirmation Hearing.

83. "GUC Note Purchase Agreement" means that certain note purchase agreement to be entered into, on or before the Effective Date, by the Debtors and the GUC Note Administrative Agent on behalf of Holders of Allowed General Unsecured Claims, pursuant to which ZHI shall issue the GUC Promissory Notes on the terms set forth in the GUC Note Term Sheet.

84. "GUC Note Documents" means any documents governing the GUC Promissory Notes, including the GUC Note Term Sheet, GUC Note Purchase Agreement, the Exit Intercreditor Agreement, and any amendments, modifications, and supplements thereto, and together with any related commitments, notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith.

85. "GUC Note Term Sheet" means the term sheet describing the material terms of the GUC Promissory Notes, attached as Exhibit F to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150], and shall be acceptable to the Committee.

86. "GUC Promissory Notes" means the secured promissory notes to be issued pursuant to the GUC Note Purchase Agreement and this Plan in a face amount equal to the aggregate Allowed amount of General Unsecured Claims (inclusive of postpetition interest accrued at the Federal Judgment Rate) and on the terms set forth in the GUC Note Term Sheet.

87. "Holder" means a Person or an Entity holding a Claim against, or an Interest in, any Debtor, as applicable, including any Person or Entity that is the record or beneficial owner, nominee, investment advisor, sub-advisor, or manager of discretionary accounts that hold any Claim against or Interest in any Debtor.

88. "Impaired" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

89. "Indemnification Obligation" means any existing indemnification obligations to be assumed, Reinstated, or honored, as applicable, in accordance with **Article IV.K** of this Plan.

90. "Intercompany Claim" means any Claim against a Debtor held by another Debtor or a non-Debtor Affiliate.

91. "Intercompany Interest" means any Interest in a Debtor held by another Debtor.

92. "Interest" means, collectively, (a) any Equity Security in any Debtor and (b) any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor that existed immediately before the Effective Date.

93. "Judicial Code" means title 28 of the United States Code, 28 U.S.C. §§ 1-4001.

94. "Lien" means any lien, as defined in section 101(37) of the Bankruptcy Code.

95. "MZJV-GPX" means the joint venture between ZII and CB&I with respect to the GPX Project.

96. "Order" means any judgment, order, award, injunction, writ, permit, license, or decree of any Governmental Body or arbitrator of applicable jurisdiction.

97. "Organizational Documents" means the organizational and governance documents for the Debtors, as may be amended to give effect to the Restructuring Transactions as contemplated by the Plan, including, without limitation, any applicable certificates of incorporation, certificates of formation, or certificates of limited partnership (or equivalent organizational documents), bylaws, and limited liability company agreements.

98. "Other Priority Claim" means any Claim, other than an Administrative Claim or Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

99. "Other Secured Claim" means any Secured Claim against the Debtors other than the Prepetition Credit Facility Claims.

100. "Parent Capital Contribution" means a capital contribution to be made on or prior to the Effective Date to ZHI by the immediate parent company of ZHI, totaling $53 million and comprised of (x) $30 million in Cash and (y) the cancellation of intercompany liabilities owed by the Debtors in an amount equal to $23 million.

101. "Person" has the meaning set forth in section 101(41) of the Bankruptcy Code.

102. "Petition Date" means the date on which the Debtors commenced the Chapter 11 Cases, May 21, 2024.

103. "Plan" means this joint plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, supplemented, or otherwise modified from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with **Article IX.A** hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated by reference herein and made part of the Plan as if set forth herein; *provided, however*, that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan impacting the treatment of Holders of General Unsecured Claims under the Plan.

104. "Plan Supplement" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to this Plan (in each case, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and the Bankruptcy Rules), the initial drafts of certain of such documents to be Filed by the Debtors no later than seven (7) calendar days before the deadline to object to confirmation of this Plan to the extent available, or such later date as may be approved by the Bankruptcy Court, including the following, as applicable: (a) the Organizational Documents (solely to the extent that the Debtors determine, in their sole discretion, that any amendments to such Organizational Documents are necessary to effectuate the Restructuring Transactions on the Effective Date); (b) the Assumption List; (c) the Rejection List; (d) the Schedule of Retained Causes of Action; (e) the A&R Credit Facility Term Sheet; (f) the GUC Note Term Sheet; and (g) the GPX Excess Claims Stipulation; *provided, however*, that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan Supplement impacting the treatment of Holders of General Unsecured Claims under the Plan.

105. "Prepetition Credit Agreement" means the *Third Amendment to Second Amended and Restated Credit Agreement*, dated as of May 2, 2023 (as amended, amended and restated, supplemented, or otherwise modified from time to time), among the Prepetition Loan Parties, the Prepetition Lenders, the Prepetition Credit Facility Agent, and each other party thereto.

106. "Prepetition Credit Facility" means the senior secured credit facility, including the Prepetition Revolving Facility, Prepetition L/C Facility, and Prepetition Term Loan Facility, governed by the Prepetition Credit Agreement.

107. "Prepetition Credit Facility Agent" means Bank of America, N.A., in its capacity as the administrative agent under the Prepetition Credit Agreement.

108. "Prepetition Credit Facility Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition Credit Facility, including the Prepetition Revolver Claims, Prepetition L/C Claims, and Prepetition Term Loan Claims.

107. "Prepetition Intercreditor Agreement" means that certain intercreditor agreement executed on January 25, 2013 by and between the Prepetition Credit Facility Agent and the Sureties.

109. "Prepetition L/C Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition L/C Facility.

110. "Prepetition L/C Facility" means the senior secured letter of credit facility provided under the Prepetition Revolving Facility.

111. "Prepetition Lenders" means, collectively, the lenders under the Prepetition Credit Facility.

112. "Prepetition Loan Parties" means ZHI, Zachry EPC Holdings, LLC, and Zachry Plan Services Holdings, Inc., as borrowers, and the guarantors party to that certain *Third Amended and Restated Continuing Guaranty*, dated as of May 2, 2023.

113. "Prepetition Revolver Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition Revolving Facility.

114. "Prepetition Revolving Facility" means the senior secured revolving credit facility, including a swing line facility and the Prepetition L/C Facility, provided under the Prepetition Credit Facility.

115. "Prepetition Secured Parties" means, collectively, the Prepetition Credit Facility Agent and the Prepetition Lenders.

116. "Prepetition Term Loan Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition Term Loan Facility.

117. "Prepetition Term Loan Facility" means the senior secured term loan facility provided under the Prepetition Credit Facility.

118. "Priority Tax Claim" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

119. "Professional" means any Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

120. "Professional Fee Claim" means any Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

121. "Proof of Claim" means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

122. "Reinstatement" means, with respect to a Claim or Interest, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code. "Reinstated" and "Reinstate" shall have correlative meanings.

123. "Rejection List" means the list of Executory Contracts and Unexpired Leases that shall be rejected by the Debtors pursuant to the Plan attached as Exhibit C to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150] and as may be amended from time to time.

124. "Related Party" means with respect to an Entity, collectively, (a) such Entity's current and former Affiliates and (b) such Entity's current and former Affiliates' respective directors, managers, officers, shareholders, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, managers, fiduciaries, trustees, employees, agents (including any disbursing agent), advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, other representatives, and other professionals, representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), and the respective heirs, executors, estates, and nominees of the foregoing.

125. "Released Avoidance Actions" means any and all avoidance, recovery, subordination, or other Claims and Causes of Action that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 510, 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code, or other similar or related state, federal, or foreign statutes, common law, or other applicable law.

126. "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.

127. "Released Prepetition Lenders" means, collectively, the Prepetition Lenders that do not elect to opt-out of, or that do not object to, the Third-Party Release.

128. "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 this Plan, current employees of the Debtors as of the Voting Record Date shall not be Releasing Parties under this Plan.

129. "Reorganized Debtor" means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, unless otherwise dissolved pursuant to this Plan.

130. "Restructuring Expenses" means the actual, reasonable, and documented fees and expenses of the Prepetition Lenders, subject to the terms of the Prepetition Credit Facility or any applicable fee reimbursement letter between any Entity and the Debtors, as the case may be.

131. "Restructuring Transactions" means the transactions described in **Article IV.C** of this Plan.

132. "Schedule of Retained Causes of Action" means the schedule of certain Causes of Action of the Debtors (attached as Exhibit D to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150]) that, notwithstanding anything to the contrary in the Plan, are not released, waived, or transferred pursuant to this Plan, as the same may be amended, modified, or supplemented from time to time.

133. "Schedules" means, collectively, the schedules of assets and liabilities and statements of financial affairs Filed by the Debtors on July 16, 2024 [Docket Nos. 511-52] pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as amended on August 30, 2024 [Docket Nos. 855-64], on December 2, 2024 [Docket No. 1564], and on December 20, 2024 [Docket Nos. 1770-75], and as the same may be further amended, modified, or supplemented from time to time.

134. "Secured Claim" means a Claim: (a) secured by a valid, perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

135. "Securities Act" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa, or any similar federal, state, or local Law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

136. "SIR" means any self-insured retention under the Debtors' insurance policies.

137. "Sunbelt" means Sunbelt Rentals, Inc. or its duly authorized agent on behalf of itself and its affiliates.

138. "Sunbelt Promissory Note" means that certain secured promissory note to be issued by Zachry Holdings, Inc. to Sunbelt on the terms set forth in the Sunbelt Term Sheet.

139. "Sunbelt Term Sheet" means Exhibit A attached to the *Stipulation and Agreed Order Regarding Sunbelt Claims* [Docket No. 2284].

140. "Sureties" means Travelers Casualty & Surety Company of America and Pacific Indemnity Company.

141. "Third-Party Release" means the release set forth in **Article VIII.D** of this Plan.

142. "Unexpired Lease" means a lease to which one or more of the Debtors are a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

143. "Unimpaired" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

144. "Unsecured Claim" means any Claim that is not a Secured Claim.

145. "U.S. Trustee" means the Office of the United States Trustee.

146. "Voting Record Date" means the record date for determining whether any Holder of an Impaired Claim is entitled to vote to accept or reject the Plan, as established pursuant to the Disclosure Statement Order.

148. "Workers' Compensation Program" means the Debtors' (a) written contracts, agreements, and agreements of indemnity, in each case relating to workers' compensation, (b) self-insured workers' compensation bonds, policies, programs, and plans for workers' compensation, and (c) workers' compensation insurance issued to or entered into at any time by any of the Debtors.

149. "Zachry Interests" means the Interests in ZHI.

150. "ZHI" means Zachry Holdings, Inc.

151. "ZII" means Zachry Industrial, Inc.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented in accordance with this Plan or the Confirmation Order, as applicable; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and

assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits contained in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (8) unless otherwise specified, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (12) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (13) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (14) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of this Plan, all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (15) unless otherwise specified, any action to be taken on the Effective Date may be taken on the Effective Date or as soon as reasonably practicable thereafter.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If any payment, distribution, act, or deadline under this Plan is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date.

D. Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of this Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with this Plan, and the Confirmation Order (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided*, *however*, corporate or limited liability company governance matters relating to the Debtors or the Reorganized Debtors, shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor or the Reorganized Debtor.

E. Reference to Monetary Figures.

All references in this Plan to monetary figures shall refer to the legal tender of the United States of America, unless otherwise expressly provided herein.

F. Controlling Document.

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, the terms of the relevant provision in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of any inconsistency between the Plan and the GPX Settlement Documents with respect to the terms of the GPX Settlement, the GPX Settlement Documents shall control. In the event of an inconsistency between the Confirmation Order and this Plan, the Confirmation Order shall control.

ARTICLE II.
ADMINISTRATIVE AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Restructuring Expenses have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in **Article III** hereof.

A. Administrative Claims.

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, or otherwise provided for under the Plan, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims, Claims for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code, and Restructuring Expenses) shall be paid in full an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in full and final satisfaction, compromise, settlement, release, and discharge of such Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date, or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed on or prior to the Effective Date, the first Business Day after the date that is thirty (30) days after the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Nothing in the foregoing or otherwise in this Plan shall prejudice the Debtors' or the Reorganized Debtors' rights and defenses regarding any asserted Administrative Claim.

For the avoidance of doubt, and notwithstanding anything to the contrary in the Plan, any Allowed Administrative Claims that are GPX Administrative Claims to the extent not satisfied prior to the Effective Date, if any, shall be paid by Golden Pass in accordance with the terms of the GPX Settlement Documents and this Plan.

B. Professional Fee Claims.

1. Final Fee Applications and Payment of Professional Fee Claims.

All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. The Reorganized Debtors shall pay Professional Fee Claims in Cash as soon as practicable after such Professional Fee Claims are Allowed.

2. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in this Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of this Plan and Consummation incurred by the Debtors (including for the avoidance of doubt the Committee's Professional fees and expenses). Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

C. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash equal to the full amount of its Claim or such other treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

D. Restructuring Expenses.

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date (or, with respect to necessary post-Effective Date matters, after the Effective Date), shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein, without any requirement to File a fee application with the Bankruptcy Court, without the need for itemized time detail, or without any requirement for Bankruptcy Court review or approval. All Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Effective Date; *provided*, *however*, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Effective Date, invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. After the Effective Date, the Debtors and Reorganized Debtors (as applicable) shall continue to pay when due and payable in the ordinary course of their business any unpaid Restructuring Expenses that were incurred on, before, or after the Effective Date.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests.

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in **Article II** of this Plan (or as otherwise set forth herein), all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims, Professional Fee Claims, Priority Tax Claims, or Restructuring Expenses, as described in **Article II**.

A Claim or an Interest, or any portion thereof, is classified in a particular Class only to the extent that any portion of such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under this Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims against and Interests in the Debtors pursuant to this Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
2	Other Priority Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
3	Prepetition Credit Facility Claims	Impaired	Entitled to Vote
4	Deferred Compensation Plan Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
5	Convenience Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote

Class	Claim or Interest	Status	Voting Rights
7	Intercompany Claims	Impaired/Unimpaired	Presumed to Accept / Presumed to Reject; Not Entitled to Vote
8	Intercompany Interests	Impaired/Unimpaired	Presumed to Accept / Presumed to Reject; Not Entitled to Vote
9	Zachry Interests	Unimpaired	Presumed to Accept; Not Entitled to Vote

B. Formation of Debtor Groups for Convenience Only.

This Plan is a separate plan of reorganization for each Debtor. This Plan groups the Debtors together solely for the purpose of describing treatment under the Plan, Confirmation of this Plan, and making distributions in respect of Claims against and Interests in the Debtors under this Plan. Such groupings shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under this Plan, all Debtors shall continue to exist as separate legal entities. The Plan is not premised on, and does not provide for, the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan, or otherwise.

C. Treatment of Claims and Interests.

Each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under this Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent less favorable treatment is agreed to by the Reorganized Debtors and the Holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

1. Class 1 – Other Secured Claims.

a. Classification: Class 1 consists of all Other Secured Claims.

b. Treatment: In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each Holder of such Allowed Other Secured Claim shall receive, at the option of the applicable Debtor or Reorganized Debtor, either:

i. payment in full in Cash of its Allowed Other Secured Claim;

ii. the collateral securing its Allowed Other Secured Claim;

iii. Reinstatement of its Allowed Other Secured Claim; or

iv. such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

For the avoidance of doubt, and notwithstanding anything to the contrary in this Plan, the treatment provided to any Allowed Other Secured Claim that is a GPX Claim that has not been satisfied prior to the Effective Date, if any, shall be provided by Golden Pass in accordance with the terms of the GPX Settlement Documents and this Plan.

c. Voting: Allowed Other Secured Claims in Class 1 are Unimpaired. Each Holder of an Allowed Other Secured Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

2. Class 2 – Other Priority Claims.

   a. Classification: Class 2 consists of all Other Priority Claims.

   b. Treatment: In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive Cash in an amount equal to such Allowed Other Priority Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

   c. Voting: Allowed Other Priority Claims in Class 2 are Unimpaired. Each Holder of an Allowed Other Priority Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

3. Class 3 – Prepetition Credit Facility Claims.

   a. Classification: Class 3 consists of all Prepetition Credit Facility Claims.

   b. Allowance: On the Effective Date, all Prepetition Credit Facility Claims shall be deemed Allowed, and not subject to any counterclaim, defense, offset, or reduction of any kind, in an aggregate amount not less than $281,250,000, *plus* any obligations, unpaid fees, unpaid premiums, and accrued and unpaid interest as of the Petition Date due and owing to Holders of Prepetition Credit Facility Claims under the Prepetition Credit Facility.

   c. Treatment: In exchange for full and final satisfaction, settlement, release, and discharge of (including any Liens related thereto) each Allowed Prepetition Credit Facility Claim, each Holder of an Allowed Prepetition Credit Facility Claim shall, on the Effective Date, become party to, and bound by, the A&R Credit Facility on account of such Holder's Allowed Prepetition Credit Facility Claim, on the terms set forth in the A&R Credit Facility Documents.

   d. Voting: Allowed Prepetition Credit Facility Claims in Class 3 are Impaired. Each Holder of an Allowed Prepetition Credit Facility Claim shall be entitled to vote to accept or reject this Plan.

4. Class 4 – Deferred Compensation Plan Claims.

   a. Classification: Class 4 consists of all Deferred Compensation Plan Claims.

   b. Treatment: Except to the extent that a Holder of an Allowed Deferred Compensation Plan Claim agrees to less favorable treatment, each Allowed Deferred Compensation Plan Claim shall be Reinstated pursuant to section 1124 of the Bankruptcy Code, and each such Holder's rights under the Deferred Compensation Plan shall be honored by the Reorganized Debtors in accordance with the terms of the Deferred Compensation Plan.

   c. Voting: Allowed Deferred Compensation Plan Claims in Class 4 are Unimpaired. Each Holder of an Allowed Deferred Compensation Plan Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

5. Class 5 – Convenience Claims.

   a. Classification: Class 5 consists of all Convenience Claims.

   b. Treatment: Except to the extent that a Holder of an Allowed Convenience Claim agrees to less favorable treatment, each Holder of an Allowed Convenience Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Convenience Claim, on

the Effective Date or as soon as practicable thereafter, Cash in an amount equal to such Holder's Allowed Convenience Claim (excluding any interest that may be owed on such Claim), but in no event shall distributions on account of any Allowed Convenience Claim exceed the Convenience Claim Amount.

c. Voting: Allowed Convenience Claims in Class 5 are Unimpaired. Each Holder of an Allowed Convenience Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims.

a. Classification: Class 6 consists of all General Unsecured Claims.

b. Treatment: 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, a GUC Promissory Note in the principal amount of its Allowed General Unsecured Claim, inclusive of postpetition interest accrued at the Federal Judgment Rate from the Petition Date through the Effective Date; *provided*, *however*, notwithstanding anything to the contrary in this 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 Documents and this Plan.

c. Voting: Allowed General Unsecured Claims in Class 6 are Impaired. Each Holder of an Allowed General Unsecured Claim shall be entitled to vote to accept or reject this Plan.

7. Class 7 – Intercompany Claims.

a. Classification: Class 7 consists of all Intercompany Claims.

b. Treatment: On the Effective Date, or as soon as reasonably practicable thereafter, Allowed Intercompany Claims shall be, at the option of the applicable Debtor, Reinstated, converted to equity, or otherwise set off, settled, distributed, contributed, canceled, or released to the extent reasonably determined to be appropriate by the Debtors or Reorganized Debtors, as applicable.

c. Voting: Allowed Intercompany Claims in Class 7 are either (i) Unimpaired and are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code, or (ii) Impaired and are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders of Intercompany Claims are not entitled to vote to accept or reject this Plan.

8. Class 8 – Intercompany Interests.

a. Classification: Class 8 consists of all Intercompany Interests.

b. Treatment: On the Effective Date, Intercompany Interests shall, at the option of the applicable Debtor, be:

i. Reinstated; or

ii. set off, settled, addressed, distributed, contributed, merged, cancelled, or released.

c. Voting: Allowed Intercompany Interests in Class 8 are either (i) Unimpaired and are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy

Code, or (ii) Impaired and are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders of Intercompany Interests are not entitled to vote to accept or reject this Plan.

9. Class 9 – Zachry Interests.

a. Classification: Class 9 consists of all Zachry Interests.

b. Treatment: Zachry Interests shall be Reinstated on the Effective Date, and the legal, equitable, and contractual rights to which Holders of Zachry Interests are entitled shall remain unaltered.

c. Voting: Allowed Zachry Interests in Class 9 are Unimpaired. Holders of Zachry Interests shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

D. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in this Plan, nothing under this Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claims, including, all rights regarding legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

E. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. Acceptance by Impaired Classes.

An Impaired Class of Claims shall have accepted this Plan, if not counting the vote of any Holder designated under section 1126(e) of the Bankruptcy Code, (i) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in the Class have voted to accept this Plan, and (ii) the Holders of more than one-half in number of the Allowed Claims actually voting in the Class have voted to accept this Plan.

G. Voting Classes, Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims eligible to vote and no Holders of Claims eligible to vote in such Class vote to accept or reject this Plan, the Holders of such Claims in such Class shall be deemed to have accepted this Plan.

H. Intercompany Interests.

To the extent Reinstated under this Plan, distributions on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience, for the ultimate benefit of the Holders of Zachry Interests, and in exchange for the Debtors' and Reorganized Debtors' agreement under this Plan to make certain distributions to the Holders of Allowed Claims.

I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by one or more of the Classes entitled to vote pursuant to **Article III.C** of this Plan. The Debtors shall seek Confirmation of this Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify this Plan in accordance with **Article X** of this Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification,

including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

J. No Substantive Consolidation.

Although this Plan is presented as a joint plan of reorganization for administrative purposes, this Plan does not provide for the substantive consolidation of the Debtors' Estates, and on the Effective Date, the Debtors' Estates shall not be deemed to be substantively consolidated for any reason. Except as expressly provided herein, nothing in this Plan, the Confirmation Order, or the Disclosure Statement shall constitute or be deemed to constitute a representation that any one or all of the Debtors is subject to or liable for any Claims against or Interests in any other Debtor. A Claim against or Interest in multiple Debtors will be treated as a separate Claim against or Interest in each applicable Debtor's Estate for all purposes, including voting and distribution; *provided, however*, that no Claim will receive value in excess of one hundred percent (100.0%) of the Allowed amount of such Claim (inclusive of postpetition interest, if applicable and if owed under this Plan) under the Plan for all such Debtors.

K. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired or is properly classified under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

L. Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Any such contractual, legal, or equitable subordination rights shall be settled, compromised, and released pursuant to this Plan.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. General Settlement of Claims and Interests.

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to this Plan, including all General Unsecured Claims and GPX Claims, and any challenge to the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Credit Facility Claims, whether under any provision of chapter 5 of the Bankruptcy Code, based on any equitable theory, or otherwise. This Plan shall be deemed a motion to approve the good faith compromise and settlement of all Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to **Article VI** hereof, all distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

B. GPX Settlement.

The terms of the GPX Settlement, as approved by the GPX Final Settlement Order, are incorporated into, and are an integral part of, this Plan. Nothing herein modifies the terms of the GPX Settlement or the rights, obligations, and interests of the GPX Settlement Parties under the GPX Settlement Documents. For the avoidance of doubt, the GPX Settlement Parties, as applicable, shall comply with the terms of the GPX Final Settlement Order through and following the Effective Date. Notwithstanding anything to the contrary herein, including **Article VIII**

hereof, the terms of the GPX Settlement and the GPX Final Settlement Order remain binding on the GPX Settlement Parties and, as applicable, the A&R Credit Facility Agent and A&R Credit Facility Lenders. In the event of any inconsistency between the Plan and the GPX Settlement Documents with respect to the terms of the GPX Settlement, the GPX Settlement Documents shall control.

For the avoidance of doubt, Golden Pass is a Released Party as set forth in this Plan and shall be entitled to the protections of this Plan's release and injunction provisions, including the Third-Party Release, to the fullest extent provided herein and under applicable law. Further, and for the avoidance of doubt, Golden Pass and any property interest of Golden Pass shall be entitled to the protections of this Plan's release and injunction provisions with respect to all Claims that constitute GPX Claims that are satisfied, discharged, and/or released in connection with the GPX Settlement and this Plan, and no Holder of a satisfied GPX Claim shall have any recourse against any Entity, including Golden Pass and its property, on account of such satisfied GPX Claim regardless of whether such Holder is a Releasing Party under this Plan.

In addition, notwithstanding anything to the contrary in this Plan, neither this Plan nor any Restructuring Transaction contemplated herein shall impair Golden Pass's right to make the GPX L/C Permitted Draws, pursuant to the terms of the GPX Settlement and GPX Excess Claims Stipulation. However, pursuant to the GPX Excess Claims Stipulation, the Debtors may wire Cash to Golden Pass in the amount of each Scheduled Draw on or before the date each Scheduled Draw is due under the GPX Settlement, in lieu of Golden Pass making each Scheduled Draw against the GPX L/C. If the Debtors fail to make such Cash payments when due, Golden Pass may make the corresponding Scheduled Draw(s) against the GPX L/C, as contemplated under the GPX Settlement. Upon Golden Pass's receipt of the final GPX L/C Permitted Draw (or the corresponding Cash amounts from the Debtors pursuant to this section), the remaining GPX L/C shall be deemed cancelled, null, and void, without any further notice to or action, order, or approval of the Bankruptcy Court, consistent with the GPX Settlement; Golden Pass shall not be permitted to request any other or additional draws thereunder; and Golden Pass shall be deemed to release, waive, and discharge any and all rights it has or may have in respect of the GPX L/C, the GPX L/C Issuer, and the GPX Parent Guarantee. Until Golden Pass receives the final GPX L/C Permitted Draw (or the corresponding Cash amounts from the Debtors), the Debtors, GPX L/C Issuer, and A&R Credit Facility Lenders, as applicable, shall renew the GPX L/C as necessary, and shall not take any action that would impair, affect, or prejudice Golden Pass's rights to the GPX L/C Permitted Draws. The A&R Credit Facility Agent and A&R Credit Facility Lenders have consented to the GPX L/C Permitted Draws in accordance with the GPX Settlement; the Debtors and/or Reorganized Debtors, the A&R Credit Facility Agent, and the A&R Credit Facility Lenders further have waived, released, and extinguished any claims, defenses, or disputes with respect to the GPX L/C Permitted Draws, and stipulate and agree that all conditions and prerequisites for the GPX L/C Permitted Draws in accordance with the GPX L/C have been met, *provided that*, for each GPX L/C Permitted Draw actually drawn by Golden Pass against the GPX L/C, Golden Pass shall notify the A&R Credit Facility Agent of the GPX L/C Permitted Draw in the manner set forth in Annex A to the GPX L/C, as amended by the parties pursuant to the GPX Settlement.

C. Restructuring Transactions.

Before, on, and after the Effective Date, the Debtors, the Reorganized Debtors, the GUC Note Administrative Agent, or the GUC Note Collateral Agent, as applicable, shall consummate the Restructuring Transactions and may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan that are consistent with and pursuant to the terms and conditions of this Plan, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of this Plan, the Plan Supplement, and the Confirmation Order; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan, the Plan Supplement, and the Confirmation Order, and having other terms to which the applicable Entities may agree; (3) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the execution and/or delivery of the A&R Credit Facility Documents and effectiveness of the A&R Credit Facility; (5) the execution and delivery of the GUC Note Documents; (6) the issuance of the GUC Promissory Notes on account of Allowed General Unsecured Claims; (7) the issuance of the Sunbelt Promissory Note; (8) the execution of the Exit Intercreditor Agreement; (9) the Parent Capital Contribution; (10) such other transactions that are required to effectuate the Restructuring Transactions; and (11) all

other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall and shall be deemed to, pursuant to sections 363, 1123, and 1142 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan.

D. The Reorganized Debtors.

Except as otherwise provided herein or as may be provided in the Plan Supplement or the Confirmation Order, each of the Reorganized Debtors shall continue its existence as a separate Entity after the Effective Date, with all the powers thereof, pursuant to the applicable law in the jurisdiction in which each Reorganized Debtor is incorporated and pursuant to the Organizational Documents. On the Effective Date, all Zachry Interests shall be Reinstated and the Reorganized Debtors shall be deemed to adopt and re-affirm the Organizational Documents without any further action, notice, or approval. The Reorganized Debtors shall be authorized to adopt any agreements, documents, and instruments, and to take any other action contemplated under this Plan as necessary to consummate this Plan.

E. Vesting of Assets in the Reorganized Debtors.

Except as otherwise provided in this Plan or any agreement, instrument, or other document incorporated herein, on the Effective Date, all property in each Estate, including all Causes of Action and any property acquired by any of the Debtors pursuant to this Plan, shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, Causes of Action, or other encumbrances. On and after the Effective Date, except as otherwise provided in this Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

F. Sunbelt Promissory Note.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the Sunbelt Promissory Note shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Sunbelt Promissory Note and the Exit Intercreditor Agreement; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Sunbelt Promissory Note; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors, Sunbelt and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

G. GUC Promissory Notes.

On or prior to the Effective Date, the Debtors and the GUC Note Administrative Agent shall execute the GUC Note Documents and the Debtors shall take all steps necessary to issue the GUC Promissory Notes in accordance with the Plan and the GUC Note Documents. If any General Unsecured Claims are Allowed after the Effective Date, within ten (10) Business Days of such Allowance, the Reorganized Debtors shall issue additional GUC Promissory Notes in the amount of such Allowed Claims to ensure that each Holder of an Allowed General Unsecured Claim receives the treatment specified in **Article III.C.6** of this Plan. If any General Unsecured Claims Allowed as of the Effective Date are, after the Effective Date, Allowed in a different amount, Disallowed, reclassified, withdrawn, or otherwise altered, the GUC Note Administrative Agent shall update the debt register maintained pursuant to the GUC

Note Documents to account for any such changes to any such General Unsecured Claim, and any GUC Promissory Notes issued on account of a General Unsecured Claim that is subsequently Disallowed, reclassified, or withdrawn shall be deemed cancelled. As set forth in **Article VII.A** of the Plan, the Reorganized Debtors shall retain sole authority to reconcile and object to Claims after the Effective Date.

Confirmation of the Plan and execution of the GUC Note Documents by the GUC Note Administrative Agent and/or GUC Note Collateral Agent shall be deemed to bind all Holders of Allowed General Unsecured Claims receiving the GUC Promissory Notes under the Plan as if each such party had executed the GUC Note Documents with appropriate authorization.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the GUC Note Documents shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the GUC Promissory Notes; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the GUC Note Documents and the Exit Intercreditor Agreement; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors, the GUC Note Administrative Agent, the GUC Note Collateral Agent, and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

H. Sources of Consideration for Plan Distributions.

Each distribution and issuance referred to in **Article VI** of this Plan shall be governed by the terms and conditions set forth in this Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The Debtors and the Reorganized Debtors, as applicable, shall fund distributions under this Plan with (a) Cash on hand; (b) proceeds from the A&R Credit Facility; (c) the issuance of the Sunbelt Promissory Note; (d) the issuance of the GUC Promissory Notes; and (e) proceeds from the Parent Capital Contribution.

1. Use of Cash.

The Debtors, Reorganized Debtors, and Distribution Agent, as applicable, shall use Cash on hand for working capital purposes and to fund distributions to certain Holders of Allowed Claims, consistent with the terms of this Plan. The Debtors and Reorganized Debtors will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Debtors or Reorganized Debtors to satisfy their obligations under the Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and will not violate the terms of the Plan.

2. A&R Credit Facility.

On the Effective Date, the Reorganized Debtors shall enter into the A&R Credit Facility, the terms of which will be set forth in the A&R Credit Facility Documents. Confirmation of this Plan shall be deemed final approval of the A&R Credit Facility, the A&R Credit Facility Documents, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and authorization for the Reorganized Debtors to enter into and execute the A&R Credit Facility Documents and such other documents as may be required to effectuate the financings and treatment provided by this Plan.

Confirmation of this Plan, and the occurrence of the Effective Date, shall bind each A&R Credit Facility Lender to the A&R Credit Facility Documents as if each such party had executed the A&R Credit Facility Documents with appropriate authorization.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the A&R Credit Facility Documents shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the A&R Credit Facility Documents; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the A&R Credit Facility Documents; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

3. Sunbelt Promissory Note.

On the Effective Date, the Reorganized Debtors shall issue the Sunbelt Promissory Note on the terms set forth in the Sunbelt Term Sheet. The issuance of the Sunbelt Promissory Note under the Plan is duly authorized without the need for any further action, authorization, or consent by the Debtors, the Reorganized Debtors, or any other Entity. The Sunbelt Promissory Note issued pursuant to the Plan shall be duly authorized, validly issued, and non-assessable.

4. GUC Promissory Notes.

On the Effective Date, and from time to time thereafter in accordance with **Article IV.G** of this Plan, the Reorganized Debtors shall issue the GUC Promissory Notes as set forth in the GUC Note Documents and the GUC Promissory Notes shall vest in the GUC Note Administrative Agent for distribution to Holders of Allowed General Unsecured Claims. The issuance of the GUC Promissory Notes under the Plan is duly authorized without the need for any further action, authorization, or consent by the Debtors, the Reorganized Debtors, the GUC Note Administrative Agent, or any other Entity. Confirmation of this Plan shall be deemed final approval of each of the GUC Promissory Notes, the GUC Note Purchase Agreement, the GUC Note Documents, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and authorization for the Reorganized Debtors to enter into and execute the GUC Note Documents, and such other documents as may be required to effectuate the GUC Promissory Notes. The GUC Promissory Notes issued pursuant to the Plan shall be duly authorized, validly issued, and non-assessable.

5. Parent Capital Contribution.

On or prior to the Effective Date, the Parent Capital Contribution shall be contributed to ZHI. The Debtors, Reorganized Debtors, and the Distribution Agent, as applicable, shall use the Cash proceeds from the Parent Capital Contribution for working capital purposes and to fund distributions to certain Holders of Allowed Claims, consistent with the terms of this Plan.

I. Cancellation of Existing Agreements and Interests.

On the Effective Date, except with respect to the A&R Credit Facility, the Sunbelt Promissory Note, the GUC Promissory Notes, the Parent Capital Contribution, the Zachry Interests, the Prepetition Intercreditor Agreement, the GPX Settlement Documents, the GPX L/C (subject to **Article IV.B** hereof), the GPX Parent Guarantee (subject to **Article IV.B** hereof), all Employee Obligations (including the Deferred Compensation Plan) assumed pursuant to **Article IV.K** hereof, all Indemnification Obligations assumed pursuant to **Article IV.L** hereof, and all Executory

Contracts and Unexpired Leases assumed pursuant to **Article V.A** hereof, or to the extent otherwise provided in this Plan or the Confirmation Order, all notes, instruments, certificates, and other documents evidencing Claims or Interests, including credit agreements and indentures, shall be canceled and the obligations of the Debtors and any non-Debtor Affiliate thereunder or in any way related thereto shall be deemed satisfied in full, cancelled, discharged, and of no force or effect. Holders of, or parties to, such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights, distributions, and treatment provided for pursuant to this Plan.

J. Corporate Action.

On the Effective Date, the matters under the Plan involving or requiring corporate action of the Debtors, including, but not limited to, actions requiring a vote of the boards of directors or shareholders and execution of all documentation incident to the Plan, shall be deemed to have been authorized by the Confirmation Order and to have occurred and be in effect from and after the Effective Date without any further action by the officers or directors of the Debtors, any Governing Body, or the Bankruptcy Court.

K. Directors and Officers of the Reorganized Debtors.

On the Effective Date, the directors and officers of each Reorganized Debtor shall consist of the current directors and officers of each respective Debtor.

L. Deferred Compensation Plan and Other Employee Obligations.

All written employment, confidentiality, non-competition agreements, bonus, gainshare and incentive programs, discretionary bonus plans or variable incentive plans regarding payment of a percentage of annual salary based on performance goals and financial targets for certain employees, vacation, holiday pay, severance, retirement, retention, supplemental retirement, executive retirement, pension, deferred compensation (including the Deferred Compensation Plan), indemnification, other similar employee-related agreements or arrangements, retirement income plans, medical, dental, vision, life and disability insurance, flexible spending account, and other health and welfare benefit plans, programs, and arrangements, and collective bargaining agreements that are in effect immediately prior to the Effective Date with the Debtors, shall be assumed by the Debtors and shall remain in place as of the Effective Date, and the Reorganized Debtors will continue to honor such agreements, arrangements, programs, and plans as of the Effective Date, unless otherwise provided herein or in the Confirmation Order, specifically rejected pursuant to a separate order of the Bankruptcy Court, specifically designated as a contract or lease to be rejected on the Rejection List, or specifically identified in a separate rejection motion Filed by the Debtors. For the avoidance of doubt, the Debtors' assumption of all obligations related to the Deferred Compensation Plan shall include any amounts due and owing to participants that have accrued under the Deferred Compensation Plan following the Petition Date.

The Debtors' assumption of such compensation and benefits plans, including the Deferred Compensation Plan, pursuant to the terms of this Plan shall be deemed not to trigger any applicable change of control, immediate vesting, termination, or similar provisions in any applicable plan or program, or an event of "Good Reason" (or a term of like import), in each case as a result of the consummation of the Restructuring Transactions. No counterparty shall have rights under a compensation and benefit plan or program, including the Deferred Compensation Plan, assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

Nothing in this Plan shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action, or other rights with respect to any such contracts, agreements, policies, programs, and plans. For the avoidance of doubt, pursuant to section 1129(a)(13) of the Bankruptcy Code, as of the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable orders of the Bankruptcy Court and applicable law.

M. Indemnification Obligations.

All indemnification provisions in place as of the Effective Date (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational

documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for (each in their capacities as such) the current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, financial advisors, restructuring advisors, consultants, other professionals of, or acting on behalf of, the Debtors, and the Sureties, as applicable, shall be reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such current members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, other professionals of, or acting on behalf of, the Debtors, and the Sureties, as provided under the indemnification obligations in place prior to the Effective Date; *provided*, *however*, nothing herein shall expand any of the Debtors' indemnification obligations in place as of the Petition Date.

N. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, but subject to **Article VIII** hereof, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the GPX Final Settlement Order and the releases and exculpations contained in this Plan, including in **Article VIII**.

The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the GPX Final Settlement Order and this Plan, including Article VIII of this Plan**. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation, Consummation, or the occurrence of the Effective Date.

The Reorganized Debtors reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to this Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the corresponding Reorganized Debtor, except as otherwise expressly provided in the GPX Final Settlement Order and this Plan, including **Article VIII** of this Plan. The Reorganized Debtors, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

O. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Reorganized Debtors, and their respective officers and boards of directors and managers, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, notes, releases, and other agreements or documents and take such actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of this Plan in the name of and on behalf of the Reorganized Debtors without the need for any approvals, authorization, or consents except for those expressly required pursuant to this Plan.

P. Certain Securities Law Matters.

No registration statement will be filed under the Securities Act, or pursuant to any state securities laws, with respect to the offer and distribution of any Securities under the Plan. The offering, issuance, and distribution of any Securities pursuant to the Plan, including the Sunbelt Promissory Note and the GUC Promissory Notes to the extent considered to be Securities, will be exempt from the registration requirements of section 5 of the Securities Act or any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code.

Specifically, the offer, sale, issuance, and distribution of the GUC Promissory Notes will be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act and the Notes will be freely transferable and resaleable by non-affiliates of the Debtors and Reorganized Debtors, subject to any contractual limitations or restrictions under U.S. securities laws, if applicable. The Debtors and Reorganized Debtors shall cooperate with each of the holders in determining the status of any holder as an "affiliate" of the Reorganized Debtors.

The Debtors and the Committee will negotiate in good faith to implement a structure that will provide for the transferability of the GUC Promissory Notes through the GUC Note Administrative Agent, including, but not limited to, structures that would assist any Holder of an Allowed General Unsecured Claim receiving a GUC Promissory Note from being deemed an "affiliate" of the Company or any of its subsidiaries, as such term is defined under the Securities Act.

Q. Transferability of GUC Promissory Notes.

Holders of Allowed General Unsecured Claims receiving a GUC Promissory Note may freely assign their GUC Promissory Note, without the consent of the Reorganized Debtors but after providing notice to the GUC Note Administrative Agent, to any (i) existing holder of GUC Promissory Notes, (ii) financial institution (including hedge funds) or (iii) to any Person following and during the continuation of a Breach (as defined in the GUC Note Term Sheet), *provided, however,* that any transfer or assignment of any GUC Promissory Note to any of the Reorganized Debtors' competitors or vendors (or affiliates of such competitors or vendors) shall require the prior written consent of the Reorganized Debtors in their sole discretion. The GUC Note Administrative Agent shall not provide confidential information concerning the Reorganized Debtors or their subsidiaries to any assignee or potential assignee except pursuant to a non-disclosure agreement (in a form reasonably acceptable to the Reorganized Debtors and naming the Reorganized Debtors and their subsidiaries as express third-party beneficiaries), between the GUC Note Administrative Agent and such assignee or potential assignee.

R. Section 1146 Exemption.

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under this Plan or pursuant to: (1) the issuance, reinstatement, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Reorganized Debtors; (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; (5) the grant of collateral as security for any or all of the A&R Credit Facility; (6) the issuance of the GUC Promissory Notes; (7) the issuance of the Sunbelt Promissory Note; or (8) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

S. Dissolution of Certain Debtors.

On or after the Effective Date, certain of the Debtors may be dissolved without further action under applicable law, regulation, Order, or rule, including any action by the stockholders, members, the board of directors, or similar Governing Body of the Debtors or the Reorganized Debtors; *provided*, *however*, subject in all respects to the terms of this Plan, the Reorganized Debtors shall have the power and authority to take any action necessary to wind down and dissolve the foregoing Debtors, and may, to the extent applicable: (1) file a certificate of dissolution for such Debtors, together with all other necessary corporate and company documents, to effect such Debtors' dissolution under the applicable laws of their states of formation; (2) complete and file all final or otherwise required federal, state, and local tax returns and pay taxes required to be paid for such Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any such Debtors or their Estates, as determined under applicable tax laws; and (3) represent the interests of the Debtors or their Estates before any taxing authority in all tax matters, including any action, proceeding, or audit.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

On the Effective Date, all Executory Contracts and Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Debtor in accordance with sections 365 and 1123 of the Bankruptcy Code, other than any Executory Contract or Unexpired Lease that: (1) is identified on the Rejection List; (2) previously expired or terminated pursuant to its own terms; (3) was previously assumed or rejected by the Debtors, including pursuant to the GPX Settlement; (4) is the subject of a motion or notice to reject pending as of the Effective Date; or (5) has an effective date of rejection that is after the Effective Date. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates of the Debtors or Reorganized Debtors.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the assumptions, assumptions and assignments, or rejections of the Executory Contracts or Unexpired Leases as set forth in the Plan, the Assumption List, and the Rejection List, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Except as otherwise specifically set forth herein, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order, and not assigned to a third party on or prior to the Effective Date, shall revest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms may have been modified by this Plan or order of the Bankruptcy Court.

To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease or the execution of any other Restructuring Transaction (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. For the avoidance of doubt, consummation of the Restructuring Transactions shall not be deemed an assignment of any Executory Contract or Unexpired Lease of the Debtors, notwithstanding any change in name, organizational form, or jurisdiction of organization of any Debtor in connection with the occurrence of the Effective Date.

Except as otherwise provided herein or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith, unless otherwise ordered by the Bankruptcy Court.

Notwithstanding anything to the contrary in the Plan, the Debtors or Reorganized Debtors, as applicable, reserve the right to amend or supplement the Assumption List and Rejection List in their discretion prior to the Effective Date (or such later date as may be permitted by this **Article V**); *provided*, *however*, the Debtors shall give prompt notice of any such amendment or supplement to any affected counterparty and such counterparty shall have no less than seven (7) days to object thereto on any grounds.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejections, if any, of any Executory Contracts or Unexpired Leases as provided for in this Plan or the Rejection List, as applicable. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be Filed with the Claims and Noticing Agent at the address specified in any notice of entry of the Confirmation Order and served on the Reorganized Debtors no later than thirty (30) days after the effective date of such rejection. **Any Proofs of Claim arising from the rejection of an Executory Contract or Unexpired Lease not timely Filed with the Claims and Noticing Agent shall be automatically Disallowed without further order of the Bankruptcy Court, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, or their respective property, without the need for any objection by the Debtors or Reorganized Debtors, or further notice to, action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, and be subject to the permanent injunction set forth in Article VIII.F of this Plan, notwithstanding anything in a Proof of Claim to the contrary.** All Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be treated as a General Unsecured Claim, as applicable, pursuant to **Article III.C** of this Plan and may be objected to in accordance with the provisions of **Article VII** of this Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules. In such a scenario, the GUC Note Administrative Agent in coordination with the Reorganized Debtors shall issue a GUC Promissory Note to each Holder of an Allowed General Unsecured Claim for rejection damages, as if the GUC Promissory Note was issued on the Effective Date. Notwithstanding anything to the contrary in this Plan, the Debtors or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Rejection List at any time through and including thirty days after the Effective Date.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

The Debtors or the Reorganized Debtors, as applicable, shall pay Cure Claims, if any, on the Effective Date or as soon as reasonably practicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure Claims that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be Filed with the Bankruptcy Court on or before thirty (30) days after the Effective Date. Any such request that is not timely Filed shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court; *provided*, *however*, nothing herein shall prevent the Reorganized Debtors, in their sole discretion, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure Claim. Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure Claim. The Reorganized Debtors also may settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty (30) days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing, or such other setting as requested by the Debtors or Reorganized Debtors, for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

Notwithstanding anything to the contrary herein, if there is any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning

of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, and if such dispute is not resolved in a manner acceptable to the Reorganized Debtors in their sole discretion, the Reorganized Debtors shall have the right to add the applicable Executory Contract or Unexpired Lease to the Rejection List, in which case such Executory Contract or Unexpired Lease shall be deemed rejected as of the Effective Date and no Cure Claim shall be owed in respect of such Executory Contract or Unexpired Lease. The Reorganized Debtors may determine to add an Executory Contract or Unexpired Lease to the Rejection List pursuant to this paragraph before or after the Bankruptcy Court rules on any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption. Following the resolution of any dispute regarding any Cure Claim, provided that the Reorganized Debtors do not elect to add the applicable Executory Contract or Unexpired Lease to the Rejection List, payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute or as may be agreed upon by the Reorganized Debtors and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable Cure Claim pursuant to this **Article V.C** shall result in the full release and satisfaction of any Cure Claims, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure Claim has been fully paid pursuant to this Article V.C, shall be deemed Disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.**

D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or to the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations with respect to goods previously purchased by the Debtors pursuant to any rejected Executory Contracts or Unexpired Leases.

E. Insurance Policies.

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under this Plan. Unless otherwise provided in this Plan or listed on the Rejection List, on the Effective Date: (a) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revest in the Reorganized Debtors.

F. Workers' Compensation Program.

As of the Effective Date, the Debtors and Reorganized Debtors shall continue to honor their obligations under: (a) all applicable workers' compensation laws in all applicable states and (b) the Workers' Compensation Program. **All Proofs of Claim on account of workers' compensation, including the Workers' Compensation Program, shall be deemed withdrawn and expunged without any further notice to or action, order, or approval of the Bankruptcy Court**; *provided*, *however*, that nothing in the Plan shall limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable non-bankruptcy law with respect to the Workers' Compensation Program, and nothing herein shall be deemed to impose any obligations on the Debtors or their insurers in addition to what is provided for under the terms of the Workers' Compensation Program and applicable state law.

G. Reservation of Rights.

Nothing contained in this Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or Reorganized Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease. If there is a dispute regarding a Debtor's or Reorganized Debtor's liability under an assumed Executory Contract or Unexpired Lease, the Reorganized Debtors shall be authorized to move to have such dispute heard by the Bankruptcy Court pursuant to **Article XI** of this Plan.

H. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtor or the Reorganized Debtors liable thereunder in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed.

The Distribution Agent and the GUC Note Administrative Agent, as applicable, shall make distributions under the Plan on account of each Allowed Claim in the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. Unless the Bankruptcy Court orders otherwise, if, after an initial distribution in respect of a Claim, additional amounts are Allowed in respect of such Claim, the Distribution Agent and GUC Note Administrative Agent, as applicable, shall make distributions in respect of such additional Allowed amounts no later than thirty (30) days after such additional amounts are Allowed; *provided*, *however*, for General Unsecured Claims that are Disputed as of the Effective Date and become Allowed after the Effective Date, the Reorganized Debtors shall issue a GUC Promissory Note to the GUC Note Administrative Agent within ten (10) Business Days after any such Allowance to provide the Holder of such Claim the treatment provided in **Article III.C.6** of this Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

B. Distributions to Holders of Disputed Claims and Interests.

Except as otherwise set forth in the Plan or as otherwise deemed appropriate by the Debtors or the Reorganized Debtors (in each of their sole discretion): (i) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved as set forth in **Article VII** hereof; and (ii) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on account of the Allowed Claim unless and until all objections to the Disputed Claim have been resolved as set forth in **Article VII** hereof or the Disputed Claim has been Allowed or expunged.

C. Distribution Agent.

1. Powers of the Distribution Agent.

Except with respect to General Unsecured Claims, all distributions under this Plan shall be made by the Distribution Agent. The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof. The Distribution

Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date (including taxes), and any reasonable compensation and expense reimbursement obligation (including reasonable attorneys' fees and expenses) shall be paid in Cash by the Reorganized Debtors.

D. GUC Note Administrative Agent and GUC Note Collateral Agent.

1. Powers of the GUC Note Administrative Agent.

All distributions under this Plan to General Unsecured Claims shall be made by the GUC Note Administrative Agent. The GUC Note Administrative Agent and GUC Note Collateral Agent shall be empowered to take all actions pursuant to the GUC Note Documents.

E. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be deemed closed and the Distribution Agent shall be authorized and entitled, but not required, to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. If a Claim is transferred twenty (20) or fewer days before the Distribution Record Date, the Distribution Agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

2. Delivery of Distributions in General.

Except as otherwise provided herein, the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated in the Debtors' records (including the address set forth in a Filed Proof of Claim, a written notice of address change delivered to the Reorganized Debtors, or the Debtors' Schedules) as of the date of any such distribution.

3. Manner of Payment.

At the option of the Distribution Agent, any Cash distribution to be made hereunder may be made by check, wire transfer, automated clearing house, or credit card, or as otherwise required or provided in any applicable agreements.

4. Minimum Distributions.

No Cash payment of less than $100.00 in the aggregate shall be made to a Holder of an Allowed Claim on account of such Allowed Claim.

5. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder of Allowed Claims is returned as undeliverable, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder; *provided*, *however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding

any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder of Claims to such property shall be discharged and forever barred. The Reorganized Debtors, and the Distribution Agent, as applicable, shall have no obligation to attempt to locate any Holder of an Allowed Claim other than by reviewing the Debtors' books and records and the Bankruptcy Court's filings, including reviewing any Filed Proof of Claim, written notice of address change delivered to the Reorganized Debtors, or the Debtors' Schedules.

A distribution shall be deemed unclaimed if a Holder has not: (i) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (ii) given notice to the Reorganized Debtors or Distribution Agent, as applicable, of an intent to accept a particular distribution; (iii) responded to the Reorganized Debtors' or Distribution Agent's, as applicable, requests for information necessary to facilitate a particular distribution; or (iv) taken any other action necessary to facilitate such distribution.

F. Compliance with Tax Requirements.

In connection with this Plan, to the extent applicable, the Debtors, Reorganized Debtors, Distribution Agent, GUC Note Administrative Agent, and any applicable withholding agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors, Reorganized Debtors, and Distribution Agent, as applicable, reserve the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and similar spousal awards, Liens, and encumbrances.

The Distribution Agent may require, as a condition to receipt of a distribution, that the Holder of an Allowed Claim provide any information necessary to allow the Distribution Agent to comply with any such withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority. If the Distribution Agent makes such a request and the Holder fails to comply before the date that is one hundred and eighty (180) days after the request is made, the amount of such distribution shall irrevocably revert to the applicable Reorganized Debtor and any Claim in respect of such distribution shall be discharged and forever barred from assertion against such Reorganized Debtor or its respective property.

G. No Postpetition or Default Interest on Claims.

Except as specified in **Article III.C.6** of this Plan or as otherwise specifically provided for in this Plan, the Cash Collateral Order, the Confirmation Order, the Plan Supplement, or applicable bankruptcy or non-bankruptcy law, postpetition and default interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against the Debtors shall be entitled to non-default or default interest accruing on or after the Petition Date on any such prepetition Claim.

H. Allocations.

To the extent this Plan, the Cash Collateral Order, the Confirmation Order, or applicable bankruptcy or non-bankruptcy law requires the payment of accrued but unpaid interest on prepetition Allowed Claims, distributions in respect of such Claims shall be allocated first to the principal amount of such Claims (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

I. Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the

exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

J. Setoffs and Recoupment.

Except as otherwise provided herein, each Reorganized Debtor pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or assigned on or before the Effective Date (whether pursuant to this Plan, a Final Order, or otherwise); *provided*, *however*, that neither the failure to effect such a set off or recoupment nor the allowance of any Claim pursuant to this Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action.

In no event shall any Holder of Claims be entitled to set off any such Claim against any claim, right, or Cause of Action of the Debtor or Reorganized Debtor (as applicable), unless (i) the Debtors have consented; and (ii) such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

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. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor, a Reorganized Debtor, the Distribution Agent, or the GUC Note Administrative Agent, as applicable, on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under this Plan exceeds the amount of such Allowed Claim as of the date of any such distribution under this Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen (14) day grace period specified above until the amount is repaid.

2. GPX Claims.

Nothing herein modifies the obligations of Golden Pass and the Debtors under the GPX Settlement Documents with respect to the payment of GPX Claims. To the extent not satisfied prior to the Effective Date, Golden Pass and the Reorganized Debtors shall pay Allowed Claims that constitute GPX Claims, if any, pursuant to the terms of the GPX Settlement Documents and this Plan. Such valid Claims that constitute GPX Claims and that are satisfied by Golden Pass in accordance with the GPX Settlement Documents and this Plan shall not be the obligation of the Debtors, the Estates, the Reorganized Debtors, the Distribution Agent, or any of their Related Parties, subject to the terms of the GPX Settlement Documents and this Plan.

Any dispute between Golden Pass and the Debtors and/or Reorganized Debtors regarding whether any Claim, including any Administrative Claim, constitutes a valid GPX Claim subject to payment by Golden Pass under the GPX Settlement Documents shall be determined by the Bankruptcy Court.

Notwithstanding anything to the contrary herein, to the extent Golden Pass pays a transferee that has acquired a GPX Claim from the original Holder, such payments shall count against the GPX Direct Payment Cap to the extent

set forth in the GPX Settlement Documents, and the Debtors, the Reorganized Debtors, and Golden Pass shall have no obligations to the original Holder. To the extent Golden Pass paid an original Holder of a GPX Claim prior to any transfer of such Claim becoming effective, such payments shall count against the GPX Direct Payment Cap to the extent set forth in the GPX Settlement Documents, and the Debtors, the Estates, the Reorganized Debtors, the Distribution Agent, Golden Pass, and any of their Related Parties shall have no obligations to the transferee.

For the avoidance of doubt, Golden Pass shall have no obligation to pay any Disputed Claim or otherwise pay any GPX Claim inconsistent with the terms of the GPX Settlement Documents.

3. Claims Payable by Insurers.

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim shall be Disallowed and expunged 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 applicable insurance coverage is insufficient to provide the treatment to an Allowed Claim required by **Article III** of this Plan, the Holder of such Allowed Claim shall have an Allowed General Unsecured Claim against the applicable Debtor's Estate for the deficiency. To the extent that any insurer reduces the amount payable to the Holder of an Allowed Claim on account of a SIR or deductible under any applicable insurance policy, such Holder shall have an Allowed General Unsecured Claim against the applicable Debtor's Estate equal to the amount of such reduction.

Nothing in this Plan shall be construed to limit, extinguish, or diminish the insurance coverage that may exist or shall be construed as a finding liquidating any Claim payable pursuant to an insurance policy.

4. Applicability of Insurance Policies.

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Claims Administration Responsibilities.

After the Effective Date, the Reorganized Debtors shall have the sole authority (i) to File, withdraw, or litigate to judgment objections to Claims; (ii) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (iii) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, after the Effective Date, each of the Reorganized Debtors shall have the right to object to Claims and shall retain any and all rights and defenses that the Debtors had with respect to any Claim immediately before the Effective Date, including the Causes of Action retained pursuant to **Article IV.L** of this Plan.

Any objections to, or requests for estimation of, General Unsecured Claims (excluding General Unsecured Claims that are contingent or unliquidated) must be Filed on or before the Claims Objection Deadline. If an objection or request for estimation is not Filed with respect to a General Unsecured Claim by the Claims Objection Deadline, such Claim shall be deemed Allowed, unless (i) such Claim is otherwise Disputed or Disallowed under this Plan or Final Order; (ii) such Claim is contingent or unliquidated as of the Claims Objection Deadline; or (iii) the Claims Objection Deadline is extended with respect to specific Claims

by the Bankruptcy Court for good cause shown by the Debtors. If the Bankruptcy Court orders the Claim Objection Deadline extended with respect to specific Claims and an objection or request for estimation is not Filed with respect to any such specific Claim by the extended Claims Objection Deadline, such Claim shall be deemed Allowed, unless (i) such Claim is otherwise Disputed or Disallowed under this Plan or Final Order or (ii) such Claim is contingent or unliquidated as of the extended Claims Objection Deadline.

Any Holder of a General Unsecured Claim that is contingent or unliquidated as of the Claims Objection Deadline shall provide prompt notice to the Reorganized Debtors if such Claim later becomes non-contingent and liquidated. The Reorganized Debtors may object to, or request estimation of, such Claim by no later than one hundred and eighty (180) days after receiving such notice and may withhold any distributions on such Claim until the expiration of such 180-day period or the resolution of any objection or request for estimation, whether by Final Order or agreement between the Reorganized Debtor and the Holder of such Claim. The Reorganized Debtors may seek an extension of the deadline to object to, or request estimation of, such Claim for good cause shown.

Notwithstanding anything to the contrary herein, if any General Unsecured Claim is Allowed after the GUC Promissory Notes are satisfied and discharged, the Reorganized Debtors, the Distribution Agent, the GUC Note Administrative Agent, or their successors, as applicable, shall distribute to the Holder of such General Unsecured Claim Cash in an amount equal to the value of the property such Holder is otherwise entitled to receive under **Article III.C.6** of this Plan on the Effective Date, inclusive of any interest such Holder would have received under the GUC Promissory Notes from the Effective Date through Maturity (as defined in the GUC Note Term Sheet).

B. Allowance of Claims.

Except as expressly provided in the Plan or in any Order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. The Debtors or Reorganized Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law.

C. Estimation of Claims.

Before, on, or after the Effective Date, the Debtors and the Reorganized Debtors, as applicable, may at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party in interest previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. A Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Reorganized Debtors, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim; *provided*, *however*, such limitation shall not apply to Claims against any of the Debtors requested by the Debtors to be estimated for voting purposes only.

Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen (14) calendar days after the date on which such Claim is estimated. All of the Claims and objection, estimation, and resolution procedures set forth in this Plan are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

D. Adjustment to Claims Register Without Objection.

Any duplicate Claim, any Claim (filed or scheduled) that has been paid or satisfied, or any Claim that has been amended or superseded, cancelled, or otherwise expunged (including pursuant to the Plan or the Confirmation Order), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Debtors or the Reorganized Debtors, as applicable, upon stipulation or any agreement in writing, including, without limitation, email correspondence, between the Debtors and the Holder of the applicable Claim without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Disallowance of Claims or Interests.

Except as otherwise agreed to by the Debtors or the Reorganized Debtors, as applicable, any and all Proofs of Claim filed after the Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, Order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless the Bankruptcy Court shall have determined by a Final Order, on or before the Confirmation Hearing, that cause exists to extend the Claims Bar Date as to such Proof of Claim on the basis of excusable neglect.

All Claims Filed on account of an Indemnification Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed by the Reorganized Debtors, or honored or reaffirmed, as the case may be, pursuant to this Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

All Proofs of Claim Filed on account of an Employee Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent the Reorganized Debtors elect to honor such Obligation, without any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in exchange for the Debtors' assumption of all obligations under the Deferred Compensation Plan and the Reinstatement of all Deferred Compensation Plan Claims pursuant to **Article III.C.4** of this Plan, any and all Proofs of Claim asserting Deferred Compensation Plan Claims shall be deemed satisfied and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. The rights of the Debtors, the Reorganized Debtors, and the Holders of Deferred Compensation Plan Claims with respect to such Deferred Compensation Plan Claims shall be fully reserved, and any disputes relating to amounts owed in connection with such Deferred Compensation Plan Claims shall be resolved by the Reorganized Debtors and the applicable Holder(s) in the ordinary course of business after the Effective Date.

F. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever Disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless before the Confirmation Date: (i) such Claim has been adjudicated as non-contingent; or (ii) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered before the Confirmation Date determining such Claim is no longer contingent.

G. Amendments to Proofs of Claim.

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Proof of Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and any such new or amended Claim or Proof of Claim Filed after the Effective Date shall be deemed Disallowed in full and expunged without any further action or notice to the Bankruptcy Court; *provided*, *however*, the filing of an unauthorized amendment shall not affect the underlying Claim or Proof of Claim. Nothing in this paragraph shall impair any claimant's ability to seek leave from the Bankruptcy Court to amend a Claim or Proof of Claim.

H. No Distributions Pending Allowance.

Notwithstanding any other provision of this Plan, if any portion of a Claim is a Disputed Claim, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with **Article VI** of this Plan.

J. Single Satisfaction of Claims.

In no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim or Interest exceed 100 percent of the underlying Allowed Claim or Interest plus applicable interest required to be paid under this Plan, if any, and the Allowed amount of any Claim or Interest shall be automatically reduced dollar-for-dollar on account of any payments made by any third parties on account of such Claim or Interest (including as set forth in **Article VI.K** of this Plan).

ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Discharge of Claims and Termination of Interests.

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in this Plan, the Confirmation Order, or in any contract, instrument, or other agreement or document created or entered into pursuant to this Plan, the distributions, rights, and treatment that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims or Interests, and GPX or any of its assets or properties with respect to any Claims that constitute GPX Claims, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted this Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date. For the avoidance of doubt, the discharge provided herein shall discharge, release, and extinguish any right of any Holder of any Claim to file, assert, levy, or attach any Liens or initiate any claim against any bonds or the Sureties on account of any Claims against any of the Debtors that are discharged, satisfied, or released pursuant to this Plan, including on account of General Unsecured Claims that are satisfied in full under this Plan, or otherwise enforce, collect, or recover on account of any such Claims other than as expressly permitted under this Plan. Further, and for the avoidance of doubt, the discharge provided herein shall discharge, release, and extinguish any right of any Holder of any GPX Claim to file, assert, levy, or attach any Liens against property of Golden Pass on account of any GPX Claims against any of the Debtors that are discharged, satisfied, or released pursuant to this Plan, or otherwise enforce, collect, or recover on account of any such GPX Claims against Golden Pass or any property interest of Golden Pass.

B. Release of Liens.

Except as otherwise provided in this Plan, the Confirmation Order, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective

Date and concurrently with the applicable distributions made pursuant to this Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III.C hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, including any bonds related to the Debtors, shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The foregoing direction to release Liens shall be considered a direction in accordance with, as applicable, the Prepetition Credit Agreement, as if such direction included the signatures of the necessary lenders thereunder to direct the applicable agent to take the actions contemplated thereby. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

To the extent that any Holder of a Secured Claim that has been satisfied or discharged pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, including with respect to any bonds related to the Debtors, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

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 this 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 this 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, 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 this 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 Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, 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 this 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 this Article VIII.C, 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 this 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 this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) essential to Confirmation of this 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 this 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.

D. Releases by Third Parties.

Except as otherwise expressly set forth in this Plan or the Confirmation Order, and except for the rights that remain in effect from and after the Effective Date to enforce this 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 this 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 Sunbelt Promissory Note, the GUC Promissory

Notes, the GUC Note Documents, 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 this 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 herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of this 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.

E. Exculpation.

Except as otherwise specifically provided in this 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 Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, 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 this Plan, or the distribution of property under this 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 this Plan and the Confirmation Order.

The Exculpated Parties set forth above have, and upon Confirmation of this 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 this 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 this Plan or such distributions made pursuant to this Plan.

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 this Plan in relation to any Claim or Interest that is extinguished, discharged, satisfied, or released pursuant to this Plan.

Except as otherwise expressly provided in this Plan or the Confirmation Order, or for obligations issued or required to be paid pursuant to this 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 this 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 this Plan, including on account of General Unsecured Claims that are satisfied in full under this 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 enforcing, collecting, or recovering 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 this 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 this 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 Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, the Parent Capital Contribution, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, the solicitation of votes with respect to this 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 this Plan, or the distribution of property under this 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 this 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 this 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 this Plan and the Confirmation Order from bringing an action to enforce the terms of this 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 this Plan and the Confirmation Order.

G. Limitation of Liability of Officers, Directors, and Agents.

The provisions of section 1125(e) of the Bankruptcy Code govern the protection from liability with respect to all matters governed by section 1125(e). The Debtors and their successors (and the officers, directors or agents of the Debtors or their successors) have no liability for conduct that was authorized by an order of the Bankruptcy Court. With respect to conduct during the period from the Petition Date through the Effective Date, the Debtors and their successors (and the officers, directors or agents of the Debtors or their successors) may be subject to liability only for conduct that constituted actual fraud, gross negligence, or willful misconduct, provided that such limitations on liability exist under applicable non-bankruptcy law. Notwithstanding the foregoing, this Plan does not limit liability for conduct for which the Bankruptcy Court's approval was required by applicable law, but for which approval was not granted.

H. Waiver of Statutory Limitations on Releases.

Each Releasing Party in each of the releases contained in this Plan expressly acknowledges that although ordinarily a general release may not extend to Claims that the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, each Releasing Party has carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or Claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law that provides that a release does not extend to Claims that the claimant does not know or suspect to exist in its favor at the time of executing the release, which if known by it may have materially affected its settlement with the Released Party. The releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

I. Special Provision Regarding the United States Government.

Nothing in the Confirmation Order or the Plan shall effect a release of any Claim by the United States government or any of its agencies or any state and local authority whatsoever, including without limitation any Claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United

States or any state and local authority against any party or person, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any Claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any Claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

J. Protections Against Discriminatory Treatment.

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

K. Document Retention.

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policies, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

ARTICLE IX.
CONDITIONS PRECEDENT TO CONSUMMATION OF THIS PLAN

A. Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of **Article IX.B** hereof:

1. The Bankruptcy Court shall have entered the Confirmation Order which shall be in form and substance reasonably satisfactory to the Debtors and the Committee and consistent in all material respects with the terms and conditions of the Plan;

2. The Confirmation Order shall be in full force and effect;

3. The settlements embodied in the Plan shall have been approved by the Bankruptcy Court and incorporated in the Confirmation Order;

4. The A&R Credit Facility Documents, in form and substance consistent with the A&R Credit Facility Term Sheet, shall have been executed and delivered by the Debtors and the A&R Credit Facility Agent;

5. The Sunbelt Promissory Note, in form and substance consistent with the Sunbelt Term Sheet, shall have been executed and delivered by the Debtors and Sunbelt;

6. The Debtors and the GUC Note Administrative Agent shall have executed the GUC Promissory Notes, and the GUC Promissory Notes shall have vested in the GUC Note Administrative Agent, for the benefit of, and distributions to, Holders of Allowed General Unsecured Claims;

7. The Parent Capital Contribution shall have been contributed to, and vested in, ZHI;

8. The Exit Intercreditor Agreement shall be executed in form and substance consistent with the Plan; and

9. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, actions, documents, and other agreements that are necessary to implement and effectuate the Plan and each of the other Restructuring Transactions.

B. Waiver of Conditions.

The conditions to the Effective Date set forth in this **Article IX** may be waived, in whole or in part, by the Debtors without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate this Plan; *provided, however*, the Debtors shall obtain the consent of the Prepetition Credit Facility Agent with respect to any waiver (in whole or in part) of the condition set forth in **Article IX.A.4**, and the consent of the Committee with respect to any waiver (in whole or in part) of the condition set forth in **Article IX.A.6**.

C. Substantial Consummation.

Consummation of this Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

D. Effect of Failure of Conditions.

If Consummation does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the Debtors, Claims, or Interests; (2) prejudice in any manner the rights of the Debtors, any Holders of Claims or Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders of Claims or Interests, or any other Entity, respectively.

ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THIS PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in this Plan, subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors reserve the right to modify this Plan without additional disclosure pursuant to section 1125 of the Bankruptcy Code prior to the Confirmation Date and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan; *provided, however*, that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan impacting the treatment of Holders of General Unsecured Claims under the Plan. After the Confirmation Date and before substantial consummation of the Plan, the Debtors may initiate proceedings in the Bankruptcy Court pursuant to section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order, relating to such matters as may be necessary to carry out the purposes and intent of the Plan.

After the Confirmation Date, but before the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan (including the Plan Supplement) without further order or approval of the Bankruptcy Court; *provided, however*, that such adjustments and modifications do not materially and adversely affect the treatment of Holders of Claims or Interests.

B. Effect of Confirmation on Modifications.

Entry of a Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of, or relating to, the Chapter 11 Cases, the Confirmation Order, and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or Allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code, the Confirmation Order, or this Plan;

3. resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is a party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including Cure Claims; (ii) any dispute regarding whether a contract or lease is or was executory, expired, or terminated; (iii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iv) any other issue related to any Executory Contracts and Unexpired Leases; or (v) any dispute regarding whether the Plan or any Restructuring Transactions trigger any cross-default or change of control provision in any contract or agreement;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan and adjudicate any and all disputes arising from or relating to distributions under this Plan or the Confirmation Order;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any and all matters related to Causes of Action that may arise from or in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

7. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

8. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with this Plan, the Confirmation Order, or the Disclosure Statement;

9. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan or the Confirmation Order and the administration of the Estates;

11. hear and determine disputes arising in connection with the interpretation, implementation, effect, or enforcement of this Plan or the Plan Supplement, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

12. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of this Plan or the Confirmation Order;

13. adjudicate, decide, or resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in **Article VIII** hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, exculpations, and other provisions;

14. adjudicate, decide, or resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to **Article VI** hereof;

15. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

16. determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or any contract, instrument, release, indenture, or other agreement or document created in connection with this Plan, the Plan Supplement, or the Disclosure Statement;

17. enter an order concluding or closing the Chapter 11 Cases;

18. consider any modifications of this Plan to cure any defect or omission or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. adjudicate, decide, or resolve disputes as to the ownership of any Claim or Interest;

21. adjudicate, decide, or resolve all matters related to any subordinated Claim;

22. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

23. adjudicate, decide, or resolve matters concerning state, local, and U.S. federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

24. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

25. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in this Plan, including under **Article VIII** hereof;

26. hear and determine all disputes involving the obligations under, or the terms of, the GPX Final Settlement Order;

27. enforce all orders previously entered by the Bankruptcy Court in connection with the Chapter 11 Cases;

28. hear any other matter not inconsistent with the Bankruptcy Code; and

29. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Person or Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Person or Entity's rights arising from or obligations incurred in connection with the Plan.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan, the Plan Supplement, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

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.

Unless 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.

As of the Effective Date, notwithstanding anything in this **Article XI** to the contrary, the A&R Credit Facility Documents shall be governed by the jurisdictional provisions therein and the Bankruptcy Court shall not retain any jurisdiction with respect thereto.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Subject to **Article IX.A** hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan (including, for the avoidance of doubt, the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted or rejected this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this Plan or the Confirmation Order, each Entity acquiring property under this Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and Interests shall be as fixed, adjusted, or compromised, as applicable, pursuant to this Plan and the Confirmation Order, regardless of whether any such Holder of a Claim or Interest has voted on this Plan.

B. Waiver of Stay.

The requirement under Bankruptcy Rule 3020(e) that an order confirming a plan is stayed until the expiration of fourteen (14) days after entry of the order shall be waived by the Confirmation Order. The Confirmation Order shall take effect immediately and shall not be stayed pursuant to the Bankruptcy Code, Bankruptcy Rules 3020(e), 6004(h), 6006(d), or 7062 or otherwise.

C. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary to effectuate and further evidence the terms and conditions of this Plan or the Confirmation Order. The Debtors, the Reorganized Debtors, the GUC Note Administrative Agent, or the GUC Note Collateral Agent, as applicable, and all Holders of Claims receiving distributions pursuant to this Plan and all other parties in interest, shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan and the Confirmation Order.

D. Payment of Statutory Fees.

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by each of the Debtors or the Reorganized Debtors (or the Distribution Agent on behalf of each of the Reorganized Debtors), as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

The Debtors shall file all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Reorganized Debtors shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee, which reports shall include a separate schedule of disbursements made during the applicable period, attested to by the Reorganized Debtors. The obligation to file quarterly reports shall continue until the earliest of the Debtors' cases being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

E. Statutory Committee and Cessation of Fee and Expense Payment.

On the Effective Date, the Committee shall dissolve automatically and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases, except with respect to (i) final fee applications of the Professionals asserting Professional Fee Claims, including any appeals in connection therewith, or (ii) for purposes of participating in any appeals of the Confirmation Order. The Reorganized Debtors shall no longer be responsible for paying any fees or expenses incurred after the Effective Date by the members of or advisors to the Committee, other than such fees and expenses incurred in connection with any appeals of the Confirmation Order. Any reasonable and documented fees or expenses of the Committee or its advisors incurred between the Confirmation Date and the Effective Date (or after the Effective Date with respect to any appeals of the Confirmation Order) shall be paid by the Debtors or Reorganized Debtors, as applicable, without the necessity of the filing of a fee application for such fees and expenses.

F. Reservation of Rights.

Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor or any Entity unless and until the Effective Date occurs.

G. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, manager, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Notices.

To be effective, all notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to the Debtors or the Reorganized Debtors, to:
Zachry Holdings, Inc.
P.O. Box 240130
San Antonio, TX 78224
Attention: Jay Old

with copies (which shall not constitute notice) to:

White & Case LLP
609 Main Street, Suite 2900
Houston, Texas 77002
Attention: Charles R. Koster
Email: charles.koster@whitecase.com

-and-

White & Case LLP
111 South Wacker Drive
Chicago, IL 60606
Attention: Bojan Guzina, Andrew F. O'Neill, William A. Guerrieri, Adam T. Swingle
Email: bojan.guzina@whitecase.com;
aoneill@whitecase.com;
william.guerrieri@whitecase.com;
adam.swingle@whitecase.com

2. if to the Committee, to:
Jason Brookner
Gray Reed LLP
1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
Attention: Jason S. Brookner
Email: jbrookner@grayreed.com

-and-

Ehud Barak
Daniel Desatnik
Proskauer LLP
Eleven Times Square
New York, NY 10036-8299
Attention: Ehud Barak, Daniel Desatnik
Email: ebarak@proskauer.com;
ddesatnik@proskauer.com

Paul V. Possinger
Proskauer LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, IL 60602-4342
Attention: Paul V. Possinger
Email: ppossinger@proskauer.com

3. if to the Prepetition Credit Facility Agent, to:
Bank of America, N.A.
Agency Management
900 W. Trade St.
Gateway Village – 900 Building
NC1-026-06-03
Charlotte, NC 28255
Attention: Dianna (Dottie) Benner

with copies (which shall not constitute notice) to:

McGuireWoods LLP
845 Texas Ave., 24th Floor
Houston, TX 77002
Attention: Demetra Liggins, Andrew C. Papa
Email: dliggins@mcguirewoods.com;
apapa@mcguirewoods.com

-and-

McGuireWoods LLP
1251 Avenue of Americas, 20th Floor
New York, New York 10020-1104
Attention: Shawn R. Fox
Email: sfox@mcguirewoods.com

After the Effective Date, the Debtors have authority to send a notice to Entities receiving documents pursuant to Bankruptcy Rule 2002 that such Entities must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

I. Term of Injunctions or Stays.

Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

J. Entire Agreement.

Except as otherwise indicated, and without limiting the effectiveness of this Plan (including, for the avoidance of doubt, the Plan Supplement), the Confirmation Order supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan, the Confirmation Order, the Plan Supplement, and the documents related thereto.

K. Exhibits.

All exhibits and documents included in this Plan, the Confirmation Order, and the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full in this Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at www.veritaglobal.net/ZHI or the Bankruptcy Court's website at http://www.txs.uscourts.gov/.

L. Deemed Acts.

Subject to and conditioned on the occurrence of the Effective Date, whenever an act or event is expressed under this Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party by virtue of this Plan and the Confirmation Order.

M. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to this Plan and may not be deleted or modified without the Debtors' or Reorganized Debtors' consent, as applicable; and (3) non-severable and mutually dependent.

N. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, each of the Released Parties and Exculpated Parties will be deemed to have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and in a manner consistent with the Disclosure Statement, the Plan, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws, and regulations in connection with all of their respective activities relating to support and consummation of the Plan and are entitled to the protections of section 1125(e) of the Bankruptcy Code and all other applicable protections and rights provided in the Plan. Without limiting the generality of the foregoing, upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code and other applicable law.

O. Request for Expedited Determination of Taxes.

The Debtors and Reorganized Debtors shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

P. Closing of Chapter 11 Cases.

Upon the occurrence of the Effective Date, the Reorganized Debtors shall be permitted to (1) close all of the Chapter 11 Cases except for one of the Chapter 11 Cases as determined by the Reorganized Debtors, and all contested matters relating to each of the Debtors, including objections to Claims, and enforcement of this Plan shall be administered and heard in such Chapter 11 Case and (2) change the name of the remaining Debtor and case caption of the remaining open Chapter 11 Case as desired, in the Reorganized Debtors' sole discretion.

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, including full satisfaction of all obligations of the Reorganized Debtors under this Plan, File with the Bankruptcy Court all

documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

Q. Waiver or Estoppel.

Upon the Effective Date, each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

R. Creditor Default.

An act or omission by a Holder of a Claim in contravention of the provisions of this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Reorganized Debtors may seek to hold the defaulting party in contempt of the Confirmation Order and shall be entitled to reasonable attorneys' fees and costs of the Reorganized Debtors in remedying such default. Upon the finding of such a default by a creditor, the Bankruptcy Court may: (a) designate a party to appear, sign and/or accept the documents required under the Plan on behalf of the defaulting party, in accordance with Bankruptcy Rule 7070; (b) enforce the Plan by order of specific performance; (c) award judgment against such defaulting creditor in favor of the Reorganized Debtors in an amount, including interest, to compensate the Reorganized Debtors for the damages caused by such default; and (d) make such other order as may be equitable that does not materially alter the terms of this Plan.

[Remainder of Page Intentionally Left Blank]

Dated: February 23, 2025

ZACHRY HOLDINGS, INC.
(for itself and on behalf of each of the other Debtors and Debtors in Possession)

By: */s/ Mohsin Y. Meghji*
Name: Mohsin Y. Meghji
Title: Chief Restructuring Officer

United States Bankruptcy Court
Southern District of Texas
ENTERED
February 27, 2025
Nathan Ochsner, Clerk

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

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (I) APPROVING THE DEBTORS' DISCLOSURE STATEMENT ON A FINAL BASIS AND (II) CONFIRMING THE FURTHER MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES

Zachry Holdings, Inc. and its debtor affiliates in the above-captioned Chapter 11 Cases (collectively, the "**Debtors**"),[2] having:

a. commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**") on May 21, 2024 (the "**Petition Date**");

b. continued to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

c. Filed, on January 20, 2025, the *Debtors' Revised Emergency Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Disclosure Statement, (III) Approving the Revised Confirmation Timeline, Solicitation Procedures, Solicitation Package, and Notices; (IV) Establishing Procedures for Objecting to the Disclosure Statement and*

[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] Unless otherwise noted, capitalized terms used but not otherwise defined in this order (the "**Order**") shall have the meanings ascribed to them in the Plan, the Disclosure Statement, or the Bankruptcy Code (as defined herein), as applicable. The rules of interpretation set forth in **Article I.B** of the Plan shall apply to this Order.

First Amended Plan, and (V) Granting Related Relief [Docket No. 1956] (the "**Solicitation Motion**");

d. Filed, on January 23 2025, the *Modified First Amended Joint Chapter 11 Plan of Reorganization for Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1978];

e. Filed, on January 23, 2025, the *Disclosure Statement for the Modified First Amended Joint Chapter 11 Plan of Reorganization for Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1986] (the "**Disclosure Statement**");

f. obtained, on January 24, 2025, entry of the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Disclosure Statement, (III) Approving the Revised Confirmation Timeline, Solicitation Procedures, Solicitation Package, and Notices, (IV) Establishing Procedures for Objecting to the Disclosure Statement and Modified First Amended Plan, and (V) Granting Related Relief* [Docket No. 1991] (the "**Disclosure Statement Order**");

g. caused the Combined Hearing Notice [Docket No. 1991, Ex. 6] to be served on or about January 24, 2025, in accordance with the terms of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Local Rules**"), the *Procedures for Complex Cases in the Southern District of Texas* (the "**Complex Case Procedures**"), and the Disclosure Statement Order, as evidenced by the certificate of service Filed on February 7, 2025 [Docket No. 2100] (together with all the exhibits thereto, the "**Solicitation Affidavit**");

h. commenced solicitation, on January 30, 2025, of (i) the Plan, (ii) the Disclosure Statement, (iii) ballots for voting on the Plan to Holders of Class 3 Prepetition Credit Facility Claims [Docket No. 1991, Ex. 2] and Class 6 General Unsecured Claims [Docket No. 1991, Ex. 3], (iv) the Cover Letter [Docket No. 1991, Ex. 12], and (v) the U.S. Trustee's Statement [Docket No. 1991, Ex. 14], in each case in accordance with the terms of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures, and the Disclosure Statement Order, as evidenced by the Solicitation Affidavit;

i. caused (i) the *Notice of (A) Non-Voting Status to Holders or Potential Holders of (I) Unimpaired Claims or Equity Interests Conclusively Presumed to Accept the Plan and (II) Impaired Claims or Equity Interests Conclusively Deemed to Reject the Plan and (B) Opportunity for Holders of Claims and Equity Interests to Opt Out of the Third-Party Release* [Docket No. 1991, Ex. 4] (the "**Non-Voting Status Notice**") and (ii) the

Third-Party Release Opt-Out Form [Docket No. 1991, Ex. 5] (the "**Opt-Out Form**") to be served on or about January 30, 2025, in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures, and the Disclosure Statement Order, as evidenced by the Solicitation Affidavit;

j. caused (i) the *Notice of Reclassification and Voting Status* [Docket No. 1991, Ex. 11] (the "**Reclassification Notice**"), (ii) the *Notice of Non-Voting Status with Respect to Disputed Claims* [Docket No. 1991, Ex. 10] (the "**Disputed Claims Notice**"); and (iii) the Opt-Out Form attached to each Reclassification Notice and Disputed Claims Notice to be served on or about January 30, 2025, in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures, and the Disclosure Statement Order, as evidenced by the Solicitation Affidavit;

k. caused the Employee Letter [Docket No. 1991, Ex. 13] to be served on or about January 30, 2025, in accordance with the Disclosure Statement Order, as evidenced by the Solicitation Affidavit;

l. caused the *Notice of (I) Combined Hearing to Consider (A) Final Approval of the Disclosure Statement, (B) Confirmation of the Modified First Amended Joint Chapter 11 Plan, and (C) Opportunity to Opt Out of Third-Party Releases, and (II) Related Voting and Objection Deadlines* [Docket No. 1991, Ex. 7] (the "**Publication Notice**") to be published in (i) *The New York Times* (National Edition), on January 28, 2025, (ii) *USA Today* (National Edition) and *Beaumont Enterprise* on January 29, 2025, and (iii) *Port Arthur News* on February 1, 2025 in accordance with the Disclosure Statement Order, as evidenced by the *Affidavit of Publication of the Notice of (I) Combined Hearing to Consider (A) Final Approval of the Disclosure Statement, (B) Confirmation of the Modified First Amended Joint Chapter 11 Plan, and (C) Opportunity to Opt Out of Third-Party Releases, and (II) Related Voting and Objection Deadlines in the New York Times, USA Today, Beaumont Enterprise and the Port Arthur News* Filed on February 6, 2025 [Docket No. 2085] (the "**Publication Affidavit**");

m. Filed, on February 5, 2025, the *Notice of Filing of the Plan Supplement* [Docket No. 2080], containing the GUC Trust Agreement and the GUC Trust Note Term Sheet;

n. Filed, on February 11, 2025, the *Notice of Filing of Amended GUC Note Term Sheet* [Docket No. 2122];

o. caused the *Statement of the Statutory Unsecured Claimholders' Committee Regarding the Modified First Amended Joint Chapter 11 Plan of Reorganized of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2123], to be served on or about February 12, 2025, as evidenced by the

Certificate of Service Filed on February 20, 2025 [Docket No. 2325] (the "**Supplemental Affidavit**");

p. Filed, on February 13, 2025, the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150];

q. caused the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150] to be served on or about February 13, 2025, as evidenced by the Supplemental Affidavit;

r. caused (i) the *Notice of Assumption of Executory Contract or Unexpired Lease and Cure Amounts, if Any* [Docket No. 1991, Ex. 8], (ii) the *Assumption List* [Docket No. 2150, Ex. B], (iii) the *Notice of Rejection of Executory Contract or Unexpired Lease* [Docket No. 1991, Ex. 9], (iv) the *Rejection List* [Docket No. 2150, Ex. C]; and (v) the *GPX Excess Claims Stipulation* [Docket No. 2150, Ex. G] to be served on affected counterparties on or about February 14, 2025, as evidenced by the Supplemental Affidavit;

s. Filed, on February 19, 2025, the *Notice of Filing of the Third Plan Supplement* [Docket No. 2316];

t. caused the *Notice of Filing of the Third Plan Supplement* to be served on or about February 19, 2025, as evidenced by the Supplemental Affidavit;

u. Filed, on February 23, 2025, the *Debtors' Memorandum of Law in Support of (I) Final Approval of the Disclosure Statement and (II) Confirmation of the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2361] (the "**Confirmation Brief**"); and

v. Filed, on February 23, 2025, the *Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2362] (as amended, supplemented, or otherwise modified from time to time, the "**Plan**"), attached hereto as **Exhibit A**;

w. Filed, on February 24, 2025, (i) the *Declaration of Mohsin Y. Meghji, Chief Restructuring Officer of Zachry Holdings, Inc. in Support of (I) Approval of the Disclosure Statement on a Final Basis and (II) Confirmation of the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2380] (the "**Meghji Declaration**") and (ii) the *Declaration of Jason New in Support of (I) Approval of the Disclosure Statement on a Final Basis and (II) Confirmation of the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates*

[Docket No. 2381] (the "**New Declaration**" and, together with the Meghji Declaration, the "**Confirmation Declarations**");

x. Filed, on February 25, 2025, the *Declaration of P. Joseph Morrow IV with Respect to the Tabulation of Votes on the Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2399] (the "**Voting Affidavit and Voting Report**" and, together with the Solicitation Affidavit, the Publication Affidavit, and the Supplemental Affidavit, the "**Affidavits**");

y. Filed, on February 25, 2025, the *Notice of Filing of the Fourth Plan Supplement* [Docket No. 2406]; and

z. Filed, on February 26, 2025, the *Notice of Filing of the Fifth Plan Supplement* [Docket No. 2417] (together, with the *Notice of Filing of the Plan Supplement*, the *Notice of Filing of Amended GUC Note Term Sheet*, the *Notice of Filing of the Second Plan Supplement*, the *Notice of Filing of the Third Plan Supplement*, and the *Notice of Filing of the Fourth Plan Supplement* as well as any amendments and supplements Filed prior to the Effective Date, the "**Plan Supplement**").

The Court having:

a. entered the Disclosure Statement Order on January 24, 2025;

b. set February 20, 2025 at 4:00 p.m. (prevailing Central Time) as the deadline for voting on the Plan (the "**Voting Deadline**");

c. set February 20, 2025 at 4:00 p.m. (prevailing Central Time) as the deadline for opting out of the Third-Party Release (the "**Opt-Out Deadline**");

d. set February 20, 2025 at 4:00 p.m. (prevailing Central Time) as the deadline for filing objections to final approval of the Disclosure Statement and Confirmation of the Plan (the "**Objection Deadline**");

e. scheduled February 26, 2025 at 1:30 p.m. (prevailing Central Time) as the date and time for the hearing to consider approval of the Disclosure Statement on a final basis and Confirmation of the Plan pursuant to sections 1125, 1126, 1128, and 1129 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018, as set forth in the Disclosure Statement Order (the "**Combined Hearing**");

f. reviewed the Plan, the Disclosure Statement, the Solicitation Motion, the Plan Supplement, the Confirmation Brief, the Confirmation Declarations, the Affidavits, the Combined Hearing Notice, the Publication Notice, and all Filed pleadings, exhibits, statements, and comments regarding approval

of the Disclosure Statement on a final basis and Confirmation of the Plan, including all objections, statements, and reservations of rights;

g. considered the Restructuring Transactions incorporated and described in the Plan or Plan Supplement, as applicable;

h. held the Combined Hearing;

i. reviewed the discharge, compromises, settlements, releases, exculpation, and injunctions set forth in the Plan;

j. heard the statements and arguments made by counsel in respect of approval of the Disclosure Statement on a final basis and Confirmation of the Plan;

k. considered all oral representations, live testimony, proffered testimony, documents, filings, exhibits, and other evidence regarding approval of the Disclosure Statement on a final basis and Confirmation of the Plan;

l. overruled (i) any and all objections to approval of the Disclosure Statement on a final basis and Confirmation of the Plan, except as otherwise stated or indicated on the record, and/or (ii) all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and

m. taken judicial notice of all pleadings and other documents Filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Court that notice of the Combined Hearing and the opportunity for any party in interest to object to Confirmation of the Plan having been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents Filed in support of approval of the Disclosure Statement on a final basis and Confirmation of the Plan and other evidence presented at the Combined Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefore, the Court makes and issues the following findings of fact and conclusions of law, and orders:

Findings of Fact and Conclusions of Law

IT IS HEREBY FOUND, DETERMINED, ADJUDGED, DECREED, AND ORDERED THAT:

A. Findings and Conclusions.

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

B. Jurisdiction, Venue, and Core Proceeding.

2. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Consideration of whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code are core proceedings as defined in 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.

C. Eligibility for Relief.

3. The Debtors were and are Entities eligible for relief under section 109 of the Bankruptcy Code. The Debtors are proper plan proponents under section 1121(a) of the Bankruptcy Code.

D. Commencement and Joint Administration of These Chapter 11 Cases.

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order (I) Directing Joint Administration of Cases and (II) Waiving Requirements of Bankruptcy Code Section 345(c)(1) and Bankruptcy Rules 1005 and 2002(n)* [Docket No. 21], these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their businesses as debtors-in-possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases. On June 4, 2024, the U.S. Trustee appointed the Statutory Unsecured Claimholders' Committee (the "**Committee**") pursuant to section 1102 of the Bankruptcy Code [Docket No. 176] and reconstituted the Committee on January 27, 2025 [Docket No. 2003].

E. Judicial Notice.

5. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including all pleadings and other documents Filed, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases.

F. Plan Supplement.

6. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the Debtors provided good and proper notice of the Filing of the Plan Supplement in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and all other applicable rules, laws, and requirements. No other or further notice will be required with respect to the Plan Supplement or any of the documents contained therein or related thereto. All documents included in the Plan Supplement and all other documents

necessary or appropriate to implement the Plan are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement and any of the documents contained therein or related thereto or the Plan before the Effective Date.

H. Objections Overruled.

7. Any resolution or disposition of objections (whether formal or informal), reservations of rights, statements, or joinders with respect to approval of the Disclosure Statement on a final basis and Confirmation explained or otherwise ruled upon by the Court on the record at the Combined Hearing is hereby incorporated by reference. All unresolved objections, reservations of rights, statements, and joinders are hereby overruled on the merits.

I. Modifications to the Plan.

8. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan or Plan Supplement Filed after the commencement of solicitation or described or set forth in this Order constitute technical or clarifying changes, changes with respect to particular Claims by agreement with Holders of such Claims, or modifications that do not otherwise materially and adversely affect or change the treatment of any other Claim or Interest under the Plan. These modifications are consistent with the disclosures previously made in the Disclosure Statement and notice of these modifications was adequate and appropriate under the facts and circumstances of these Chapter 11 Cases. In accordance with Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, and they do not require that Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Accordingly, the Plan is properly before this Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

J. Adequacy of the Disclosure Statement.

9. The Disclosure Statement contains "adequate information" as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code with respect to the Debtors, the Plan, and the transactions contemplated therein.

K. Disclosure Statement Order and Notice.

10. The Disclosure Statement Order conditionally approved the Disclosure Statement and established the Voting Deadline, Objection Deadline, and Opt-Out Deadline. As evidenced by the Affidavits, and the record in the Chapter 11 Cases, the Debtors provided due, adequate, and sufficient notice of the Plan, the Disclosure Statement, the Disclosure Statement Order, the Solicitation Materials, the Plan Supplement, the discharge, compromise, settlement, release, exculpation, and injunction provisions contained in the Plan, the ability to opt-out of the Plan's Third-Party Release, the Combined Hearing, the Voting Deadline, the Objection Deadline, the Opt-Out Deadline, and any other applicable dates described in the Disclosure Statement Order in compliance with the Bankruptcy Code, the Bankruptcy Rules (including Bankruptcy Rules 2002(b), 3016, 3017, and 3020(b)), the Bankruptcy Local Rules, the Complex Case Procedures, and the procedures set forth in the Disclosure Statement Order. Such notice was adequate and sufficient under the facts and circumstances of these Chapter 11 Cases in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and the Disclosure Statement Order. No other or further notice is or shall be required.

M. Ballots.

11. The Classes of Claims entitled under the Plan to vote to accept or reject the Plan (the "**Voting Classes**") are set forth below:

Class	Designation
3	Prepetition Credit Facility Claims
6	General Unsecured Claims

12. As determined in the Disclosure Statement Order, the ballots (the "**Ballots**") the Debtors used to solicit votes to accept or reject the Plan from Holders in the Voting Classes adequately addressed the particular needs of these Chapter 11 Cases and were appropriate for Holders in the Voting Classes to vote to accept or reject the Plan.

N. Solicitation.

13. As described in the Voting Affidavit and Voting Report, the solicitation of votes on the Plan complied with the procedures set forth in the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases and complied with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable rules, laws, and regulations.

14. As described in the Voting Affidavit and Voting Report, as applicable, the Solicitation Packages were transmitted and served on all Holders in the Voting Classes in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Bankruptcy Local Rules, the Disclosure Statement Order, and any applicable non-bankruptcy law. Transmission and service of the Solicitation Packages was timely, adequate, and sufficient under the facts and circumstances of these Chapter 11 Cases. No further notice is required.

15. As set forth in the Voting Affidavit and Voting Report, the Solicitation Packages were distributed to Holders in the Voting Classes that held a Claim as of January 22, 2025 (the "**Voting Record Date**"). The establishment and notice of the Voting Record Date was reasonable and sufficient.

16. The period during which the Debtors solicited acceptances or rejections of the Plan was a reasonable and sufficient period of time for each Holder in the Voting Classes to make an informed decision to accept or reject the Plan.

17. Under section 1126(f) of the Bankruptcy Code, Holders of Claims in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 4 (Deferred Compensation Plan Claims), Class 5 (Convenience Claims), and Class 9 (Zachry Interests) (collectively, the "**Deemed Accepting Classes**") are Unimpaired and conclusively presumed to have accepted the Plan. The Debtors were therefore not required to, and did not, solicit votes from the Deemed Accepting Classes. Holders of Claims in Class 7 (Intercompany Claims) and Holders of Interests in Class 8 (Intercompany Interests) are Unimpaired and conclusively presumed to have accepted the Plan (to the extent Reinstated or converted to equity, as applicable) or are Impaired and deemed to reject the Plan (to the extent set off, settled, addressed, distributed, contributed, merged, cancelled, or released), and, in either event, are not entitled to vote to accept or reject the Plan. The Debtors served Holders in the non-voting Classes with the Combined Hearing Notice and the Non-Voting Status Notice, including the Opt-Out Form.

18. The Debtors served the Employee Letter via first class mail on all current employees of the Debtors that do not hold Claims or Interests (the "**Non-Creditor Employees**"). The Employee Letter provided adequate notice of the Combined Hearing, generally described the Plan, explained that Non-Creditor Employees were specifically excluded from the Plan's Third-Party Release, and advised Non-Creditor Employees how they could request a Ballot or obtain further information about the Chapter 11 Cases from the Claims and Noticing Agent.

19. The Debtors also served the Disputed Claims Notice and the Opt-Out Form on certain Holders of Disputed Claims in these Chapter 11 Cases. The Disputed Claims Notice

provided adequate notice of the Combined Hearing, the Rule 3018 Motion Deadline, the procedures for challenging the Debtors' disallowance of Disputed Claims, and the release, exculpation, and injunction provisions of the Plan.

20. The Debtors served the Combined Hearing Notice and/or the Non-Voting Status Notice on the entire creditor matrix (except the Non-Creditor Employees served with the Employee Letter). The Combined Hearing Notice and/or the Non-Voting Status Notice adequately summarized the material terms of the Plan, the classification and treatment of claims, and the release, exculpation, and injunction provisions of the Plan. Further, because stakeholders were able to opt out of the Third-Party Release through the Ballot or the Opt-Out Form, every known stakeholder affected by the Third-Party Release (including Unimpaired creditors) was provided with the means by which the stakeholders could opt out of the Third-Party Release.

O. Voting.

21. As evidenced by the Voting Affidavit and Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Disclosure Statement, the Disclosure Statement Order, and any applicable non-bankruptcy law, rule, or regulation. As evidenced by the Voting Affidavit and Voting Report, Classes 3 and 6 have voted to accept the Plan in accordance with the requirements of sections 1126 and 1129 of the Bankruptcy Code.

P. Plan Supplement.

22. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of such documents is good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and all other applicable rules, laws, and requirements, and no other or further notice is required. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the

terms of the Plan, the Debtors may alter, amend, update, or modify the Plan Supplement before the Effective Date. Holders of Claims and Interests were provided, due, adequate, and sufficient notice of the Plan Supplement.

Q. Bankruptcy Rule 3016.

23. The Plan and any modifications thereto are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a). The Debtors appropriately Filed the Disclosure Statement and Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined by such injunction and identify the Entities that will be subject to such injunction, thereby satisfying Bankruptcy Rule 3016(c).

R. Burden of Proof.

24. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation. In addition, and to the extent applicable, the Plan is confirmable under the clear and convincing evidentiary standard. Each witness who testified or submitted a declaration on behalf of the Debtors or any other party, in support of the Disclosure Statement, Plan, and Confirmation in connection with the Combined Hearing was credible, reliable, and qualified to testify as to the topics addressed in their testimony.

S. Compliance with Bankruptcy Code Requirements – 11 U.S.C. § 1129(a)(1).

25. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code.

i. Proper Classification – 11 U.S.C. §§ 1122 and 1123.

26. The classification of Claims under the Plan is proper and satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. **Article III** of the Plan provides for the separate classification of Claims and Interests into nine (9) Classes other than Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Claims for Restructuring Expenses, which need not be classified. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications reflect no improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Class of Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

ii. Specified Unimpaired Classes – 11 U.S.C. § 1123(a)(2).

27. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. **Article III** of the Plan specifies that Claims, as applicable, in the following Classes are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code:

Class	Claims
1	Other Secured Claims
2	Other Priority Claims
4	Deferred Compensation Plan Claims
5	Convenience Claims
9	Zachry Interests

Additionally, **Article II** of the Plan specifies that Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Claims for Restructuring Expenses will be paid in full in accordance with the terms of the Plan, although these Claims are not classified under the Plan.

iii. Specified Treatment of Impaired Classes – 11 U.S.C. § 1123(a)(3).

28. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. **Article III** of the Plan specifies that Claims in the following Classes (the "**Impaired Classes**")

are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes:

Class	Claims
3	Prepetition Credit Facility Claims
6	General Unsecured Claims

iv. No Discrimination – 11 U.S.C. § 1123(a)(4).

29. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to less favorable treatment on account of such Claim or Interest.

v. Adequate Means for Plan Implementation – 11 U.S.C. § 1123(a)(5).

30. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in **Article IV** and elsewhere in the Plan, and in the exhibits and attachments to the Plan (including the Plan Supplement) and the Disclosure Statement, provide, in detail, adequate and proper means for the Plan's implementation, including: (a) the general settlement of Claims and Interests; (b) the GPX Settlement, previously approved by this Court and subject to the Plan and the GPX Settlement Documents; (c) authorization for the Debtors and/or Reorganized Debtors to take all actions necessary to effectuate the Plan, including those actions necessary or appropriate to effectuate the Restructuring Transactions, and any restructuring transaction steps set forth in the Plan Supplement, as the same may be modified or amended from time to time prior to the Effective Date; (d) the entry into, delivery of, and implementation of the A&R Credit Facility Documents and other transaction documents contemplated by the Plan; (e) the issuance of the Sunbelt Promissory Note; (f) the entry into, delivery of, and implementation of the GUC Note Documents and issuance of the GUC Promissory Notes; (g) the entry into, delivery of, and implementation of

the Exit Intercreditor Agreement; (h) the delivery and implementation of the Parent Capital Contribution; (i) the funding and sources of consideration for the Plan distributions, including the A&R Credit Facility, the Sunbelt Promissory Note, the GUC Promissory Notes, the Parent Capital Contribution, and Cash on hand; (j) the preservation of the Debtors' corporate existence following the Effective Date (except as otherwise provided in the Plan); (k) the vesting of the Estates' assets in the respective Reorganized Debtors; (l) the cancellation of certain existing agreements as provided in the Plan and this Order; (m) the authorization and approval of corporate actions under the Plan; (n) the adoption and re-affirmation of the Organizational Documents; (o) the effectuation and implementation of other documents and agreements contemplated by, or necessary to effectuate, the transactions contemplated by the Plan; (p) the assumption of certain Employee Obligations and Indemnification Obligations; (q) the preservation of Claims and Causes of Action not released pursuant to the Plan, including as set forth in the Schedule of Retained Causes of Action; and (r) the closing of the Chapter 11 Cases as provided in the Plan.

31. The precise terms governing the execution of these transactions are set forth in greater detail in the Plan or form of agreements or other documents included in the Plan Supplement or other documents related to the Plan, including the A&R Credit Facility Term Sheet, the GUC Note Term Sheet, and the Sunbelt Term Sheet.

vi. Voting Power of Equity Securities – 11 U.S.C. § 1123(a)(6).

32. The Plan is consistent with the requirements of section 1123(a)(6) of the Bankruptcy Code. To the extent required to comply with section 1123(a)(6) of the Bankruptcy Code, the Reorganized Debtors are prohibited from issuing nonvoting equity securities, notwithstanding anything to the contrary in the Plan or Plan Supplement.

vii. Directors and Officers – 11 U.S.C. § 1123(a)(7).

33. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. **Article IV.K** of the Plan provides that the directors and officers of each Reorganized Debtor shall consist of the current directors and officers of each respective Debtor.

viii. Impairment / Unimpairment of Classes – 11 U.S.C. § 1123(b)(1).

34. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. **Article III** of the Plan impairs or leaves Unimpaired each Class of Claims and Interests.

ix. Assumption – 11 U.S.C. § 1123(b)(2).

35. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. **Article V** of the Plan provides for the assumption of all of the Debtors' Executory Contracts and Unexpired Leases, other than the Rejected Contracts and/or Unexpired Leases identified on the Rejection List and as otherwise provided in **Article V.A** of the Plan, and the payment of Cure Claims, if any, related thereto, not previously assumed, assumed and assigned, or rejected during these Chapter 11 Cases under section 365 of the Bankruptcy Code. The assumption of Executory Contracts and Unexpired Leases may include the assignment of certain of such contracts to Affiliates.

36. The Debtors' determinations regarding the assumption, assumption and assignment, or rejection of Executory Contracts and Unexpired Leases are based on, and within, the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and other parties-in-interest in the Chapter 11 Cases. Entry of this Order by the Court shall constitute approval of such assumptions, assumption and assignments, and/or rejections, as applicable, including the assumption of the Executory Contracts or Unexpired Leases as provided in the

Assumption List and Rejection List included in the Plan Supplement pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

x. Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action – 11 U.S.C. § 1123(b)(3).

37. **General Compromise and Settlement of Claims and Interests.** In accordance with section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided pursuant to the Plan, the provisions of the Plan constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan, including all General Unsecured Claims and GPX Claims and any challenge to the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Credit Facility Claims, whether under any provision of chapter 5 of the Bankruptcy Code, based on any equitable theory, or otherwise. Entry of this Order shall constitute the entry of an order approving the settlement of all such Claims, Interests, and controversies under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. The compromise and settlement of such Claims and Interests embodied in the Plan and Reinstatement and Unimpairment of other Classes identified in the Plan are in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests, and are fair, equitable, and reasonable.

38. **GPX Settlement.** The terms of the GPX Settlement, as set forth in the GPX Settlement Documents, are incorporated into, and are an integral part of, the Plan. As set forth in **Article IV.B** of the Plan, the GPX Interim Settlement Order, and the GPX Final Settlement Order, the GPX Settlement is a good-faith compromise and settlement of all disputes, controversies, claims, and causes of action among the GPX Settlement Parties arising out of or otherwise related to the GPX Project and the matters described in the GPX Settlement Term Sheet; the GPX Settlement is the product of extensive arm's-length, good faith negotiations and represents a fair

and reasonable compromise among the GPX Settlement Parties; the GPX Settlement is reasonable, fair, equitable, appropriate, and in the best interests of each of the Debtors, their estates, and all vendors and subcontractors asserting Claims related to the GPX Project; and the Debtors' reasonably exercised their business judgment when determining to enter into the GPX Settlement.

39. The GPX Excess Claims Stipulation sets forth an agreement by the Debtors and Golden Pass on the amount of Excess Claims (as defined in the GPX Excess Claims Stipulation) and related matters. Each term of the GPX Excess Claims Stipulation is incorporated into, and is an integral part of, the Plan and this Order. In addition, for the avoidance of doubt, each of the stipulated facts among the Debtors and Golden Pass set forth in the GPX Excess Claims Stipulation, as well as Schedules 1 through 4 of the GPX Excess Claims Stipulation, are incorporated by reference into this Order as if set forth fully herein.

40. The Debtors and Golden Pass engaged in good faith and diligent analysis, over several months following this Court's interim and final approval of the GPX Settlement, to identify all GPX Claims, reconcile such GPX Claims, and determine the total amount of potential Excess Claims, in each case in compliance with, and furtherance of, the terms of the GPX Settlement. The Debtors and Golden Pass, among other things, reviewed the Proofs of Claim timely filed in these Chapter 11 Cases to identify asserted GPX Claims; sent letters to GPX Project vendors and subcontractors instructing them to submit all invoices for ZII's share of Pool A and Pool B obligations accruing through July 25, 2024, by September 16, 2024; reviewed all asserted Pool A and Pool B obligations submitted by such vendors; shared their analyses of the potential GPX Claims pool and direct cap payments calculation with each other; engaged in regular communications regarding accounting, reconciliation, and payment issues arising in connection with the GPX Settlement, and provided notice of the Excess Claim Stipulation and the Schedules

thereto to all known parties-in-interest. Based upon the Bar Date and the outreach by the Debtors and Golden Pass to vendors potentially asserting Pool A and Pool B obligations, all vendors and subcontractors in respect of the GPX Project have had a reasonable opportunity to identify and assert GPX Claims payable under the GPX Settlement. The schedules to the GPX Excess Claims Stipulation disclose all GPX Claims paid to date by Golden Pass, all GPX Claims to be paid by Golden Pass, and the universe of potentially valid GPX Claims, in each case identified during the Debtors' and Golden Pass's good faith reconciliation of GPX Claims that resulted in their determination of Excess Claims. The determination of Excess Claims set forth in the GPX Excess Claims Stipulation is reasonable under the circumstances and based on the good faith reconciliation and review of all potential GPX Claims conducted by the Debtors and Golden Pass.

41. The GPX Excess Claims Stipulation is a good-faith compromise and settlement of all disputes, controversies, claims, and causes of action among the Debtors and Golden Pass arising out of or otherwise related to the reconciliation and determination of Excess Claims under the GPX Settlement. The GPX Excess Claims Stipulation is the product of extensive arm's-length, good faith negotiations and represents a fair and reasonable compromise among the Debtors and Golden Pass. The GPX Excess Claims Stipulation is reasonable, fair, equitable, appropriate, and in the best interests of each of the Debtors, their estates, and all vendors and subcontractors asserting Claims related to the GPX Project. Entry into the GPX Excess Claims Stipulation reflects a sound exercise of the Debtors' business judgment.

42. **Debtor Release**. **Article VIII.C** of the Plan describes certain releases granted by the Debtors (the "**Debtor Release**"). The Debtors have satisfied the business judgment standard under Bankruptcy Rule 9019 with respect to the propriety of the Debtor Release. The Debtor Release is a necessary and integral element of the Plan, and is fair, reasonable, and in the best

interests of the Debtors, the Estates, and Holders of Claims and Interests. The Debtor Release is: (a) 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; (b) a good faith settlement and compromise of the Claims released by the Debtor Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) narrowly tailored to the circumstances of the Chapter 11 Cases; and (g) 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. The Debtor Release for the Debtor Related Parties is appropriate because the Debtor Related Parties share an identity of interest with the Debtors, supported the Plan and these Chapter 11 Cases, actively participated in meetings, negotiations, and implementation during these Chapter 11 Cases, and have provided other valuable consideration to the Debtors to facilitate the Debtors' reorganization.

43. The Debtor Release appropriately offers protection to parties that constructively participated in the Debtors' chapter 11 efforts. Such protections from liability facilitated the participation of the Debtors' stakeholders in the negotiations and compromises that led to the Plan. In addition, the Debtors are not aware of any (a) significant potential claims that are being released; or (b) pending litigation that would be discontinued as a result of the Debtor Release. The scope of the Debtor Release is appropriately tailored under the facts and circumstances of the Chapter 11 Cases. In light of, among other things, the critical nature of the Debtor Release to the Plan, the Debtor Release is appropriate.

44. For the avoidance of doubt, and notwithstanding anything to the contrary herein or in the Plan, no Claim or Cause of Action referenced on the Schedule of Retained Causes of Action shall be released by the Debtors or a Debtor Related Party pursuant to the Debtor Release.

45. **Third-Party Release. Article VIII.D** of the Plan describes certain releases granted by the Releasing Parties (the "**Third-Party Release**"). The Third-Party Release provides finality for the Debtors, the Reorganized Debtors, and the Released Parties regarding the parties' respective obligations under the Plan and with respect to the Reorganized Debtors. The Combined Hearing Notice sent to Holders of Claims and Interests, the Non-Voting Status Notice sent to all Holders of Claims and Interest not entitled to vote on the Plan, the Ballots sent to all Holders of Claims entitled to vote on the Plan, the Publication Notice published in: (a) *The New York Times* (National Edition) on January 28, 2025, (b) *USA Today* (National Edition) on January 29, 2025, (c) *Beaumont Enterprise*, on January 29, 2025, and (d) *Port Arthur News*, on February 1, 2025, in each case, unambiguously stated that the Plan contains the Third-Party Release. Such release is a necessary and integral element of the Plan, and is fair, equitable, reasonable, and in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests. Also, the Third-Party Release is: (a) consensual; (b) essential to the formulation, Confirmation, and implementation of the Plan; (c) given in exchange for the good and valuable consideration provided by the Released Parties, including the payment in full of all General Unsecured Claims pursuant to the terms of the Plan; (d) a good-faith settlement and compromise of the Claims released by the Third-Party Release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; (h) narrowly tailored to the circumstances of the Chapter 11 Cases; and (i) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the Third-Party Release. As set forth on the record

at the Combined Hearing and in **Article I.A.128.n** of the Plan, each Related Party of a Releasing Party shall be a Releasing Party solely to the extent an applicable principal Releasing Party is legally entitled to bind such Related Party to the releases contained in the Plan under applicable law.

46. The Third-Party Release is consensual as to all relevant parties, including all Releasing Parties, and such parties were provided notice of the Chapter 11 Cases, the Plan, and the deadline to object to Confirmation of the Plan, received the Combined Hearing Notice, a Ballot, and/or the Non-Voting Status Notice, and were properly informed that any Holder of a Claim against or Interest in the Debtors that did not check the "Opt Out" box on the applicable Ballot or Opt Out Form, returned in advance of the Voting Deadline, would be deemed to have expressly, unconditionally, generally, individually, and collectively consented to the release and discharge of all claims and Causes of Action against the Debtors and the Released Parties. Additionally, the release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, the Ballots, the Non-Voting Status Notice, the Combined Hearing Notice, and the Opt-Out Form.

37. The Third-Party Release provides finality for the Debtors, the Reorganized Debtors, and the Released Parties regarding the parties' respective obligations under the Plan and with respect to the Reorganized Debtors. The scope of the Third-Party Release is appropriately tailored under the facts and circumstances of the Chapter 11 Cases, is consistent with applicable law, including *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071 (2024), and is approved. **For the avoidance of doubt, and notwithstanding anything to the contrary, any party who timely opted-out of the Third-Party Release in connection with the solicitation permitted under this Court's Order [Docket No. 1392] or the Disclosure Statement Order [Docket No. 1191] is not**

bound by the Third-Party Release and also is not a Released Party under the Plan and this Order.

47. **Exculpation.** The exculpation, described in **Article VIII.E** of the Plan (the "**Exculpation**"), is appropriate under applicable law, including *In re Highland Capital Mgmt., L.P.*, 48 F. 4th 419 (5th Cir. 2022), because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in these Chapter 11 Cases in good faith and is appropriately released and exculpated from any obligation, Cause of Action, or liability for any prepetition or postpetition act taken or omitted to be taken in connection with, relating to, or arising out of the Debtors' restructuring efforts, these Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement or the Plan or any contract, instrument, release, or other agreement or document created or entered into, in connection with, or pursuant to the Disclosure Statement or the Plan, including the A&R Credit Facility, the Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, the Parent Capital Contribution, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, the filing of these 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. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions 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. Notwithstanding the foregoing, the Exculpation shall not release any obligation or liability of any Entity for any post-Effective Date obligation under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. The Exculpation, including its carveout for actual fraud, willful misconduct, and gross negligence, is consistent with applicable law in this jurisdiction.

48. The Exculpated Parties shall not incur liability for any Cause of Action or Claim related to any act or omission in connection with, relating to, or arising out of, in whole or in part, the solicitation of acceptance or rejection of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

49. **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.

50. Notwithstanding anything to the contrary in this Order, no Person or Entity may commence or pursue a Claim or Cause of Action, as applicable, of any kind against the Debtors, the Reorganized Debtors, the Released Parties, or the Exculpated Parties, as applicable, 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, as applicable, subject to **Articles VIII.C**, **VIII.D**, **VIII.E**, or **VIII.F** of the Plan, without the Court (a) first determining, after notice and a hearing, that such Claim or Cause of Action, as applicable, represents a colorable Claim of any kind, and (b) specifically authorizing such Person or Entity to bring such Claim or Cause of Action, as applicable, against any such Debtor, Reorganized Debtor, Exculpated Party, or Released Party, as applicable.

51. **Preservation of Causes of Action.** The provisions set forth in **Article IV.N** of the Plan regarding the preservation of Causes of Action in the Plan are appropriate and are in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Each Reorganized Debtor, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' rights, as applicable, to commence, prosecute, or settle such retained Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

52. **Lien Release.** The release and discharge of mortgages, deeds of trust, Liens, pledges, bond claims, or other security interests against any property of the Estates described in **Article VIII.B** of the Plan (the "**Lien Release**") is essential to the Plan and necessary to implement the Plan. The provisions of the Lien Release are appropriate, fair, equitable, and reasonable and are in the best interests of the Debtors, the Estates, and Holders of Claims and Interests.

xi. Additional Plan Provisions – 11 U.S.C. § 1123(b)(6).

53. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

T. Cure of Defaults – 11 U.S.C. § 1123(d).

54. **Article V.C** of the Plan provides for the satisfaction of Cure Claims associated with each Executory Contract and Unexpired Lease to be assumed in accordance with section 365(b)(1) of the Bankruptcy Code. The Debtors or the Reorganized Debtors, as applicable, shall pay the Cure Claims, if any, on the Effective Date, or as soon as reasonably practicable thereafter, in the ordinary course of the Debtors' business if not yet due on the Effective Date, or on such other

terms as the parties to any Executory Contract or Unexpired Lease may agree. If there is any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any objection to the assumption of any Executory Contract or Unexpired List assumed pursuant to the Plan, then payment of the applicable Cure amount shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory or Unexpired Lease. As such, the Plan provides that the Debtors will cure, or provide adequate assurance that the Debtors will promptly cure, defaults with respect to assumed Executory Contracts and Unexpired Leases in accordance with section 365(b)(1) of the Bankruptcy Code.

U. Debtor Compliance with the Bankruptcy Code – 11 U.S.C. § 1129(a)(2).

55. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code and, thus, have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, 1128, and 1129, and Bankruptcy Rules 2022, 3017, 3018, and 3019. The Debtors and their agents transmitted the Solicitation Materials and related documents and solicited and tabulated votes with respect to the Plan fairly, in good faith, and in compliance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and the Complex Case Procedures, including, but not limited to, sections 1125 and 1126(b) of the Bankruptcy Code.

V. Plan Proposed in Good Faith – 11 U.S.C. § 1129(a)(3).

56. The Debtors have proposed the Plan (including the Plan Supplement and all other documents necessary or appropriate to effectuate the Plan) in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining

that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the Plan, the process leading to Confirmation (including the overwhelming support of Holders of Claims for the Plan), and the transactions to be implemented pursuant thereto. The Debtors' good faith is evident from the facts and record of the Chapter 11 Cases, the Plan, the Disclosure Statement, the hearing to conditionally approve the Disclosure Statement, and the record of the Combined Hearing and other proceedings held in the Chapter 11 Cases. These Chapter 11 Cases were Filed, and the Plan was proposed, with the legitimate and honest purpose of maximizing the value of the Estates and allowing the Debtors to implement the Restructuring Transactions, reorganize, and emerge from bankruptcy to allow them to conduct their businesses and satisfy their obligations with sufficient liquidity and capital resources. Further, the Plan's classification, settlement, discharge, exculpation, release, and injunction provisions have been negotiated in good faith and at arm's-length, are consistent with sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and each is integral to the Plan, supported by valuable consideration, and necessary to the Debtors' successful reorganization. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

W. Payment for Services or Costs and Expenses – 11 U.S.C. § 1129(a)(4).

57. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

X. Directors, Officers, and Insiders – 11 U.S.C. § 1129(a)(5).

58. **Article IV.K** of the Plan sets forth that the directors and officer of each Reorganized Debtor shall consist of the current directors and officers of each respective Debtor.

Accordingly, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

Y. No Rate Changes – 11 U.S.C. § 1129(a)(6).

59. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. Further, as the Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission, section 1129(a)(6) of the Bankruptcy Code is satisfied.

Z. Best Interest of Creditors – 11 U.S.C. § 1129(a)(7).

60. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Meghji Declaration, the liquidation analysis attached as **Exhibit C** to the Disclosure Statement, and the other evidence related thereto in support of the Plan that was proffered prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that Holders of Allowed Claims in each Class will recover at least as much under the Plan on account of such Claim, as of the Effective Date, as such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. As a result, the Debtors have demonstrated that the Plan is in the best interests of their creditors, and the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

AA. Acceptance by Certain Classes – 11 U.S.C. § 1129(a)(8).

61. Classes 1, 2, 4, 5, and 9 constitute the Unimpaired Classes, each of which is conclusively presumed to have accepted the Plan in accordance with section 1126(f) of the Bankruptcy Code. As evidenced by the Voting Affidavit and Voting Report, Classes 3 and 6 have voted to accept the Plan. Holders of Claims and Interests in Classes 7 and 8 are Unimpaired and conclusively presumed to have accepted the Plan (to the extent Reinstated or converted to equity,

as applicable) or are Impaired and deemed to reject the Plan (to the extent set off, settled, addressed, distributed, contributed, merged, cancelled, or released), and, in either event, are not entitled to vote to accept or reject the Plan. Notwithstanding the foregoing, the Plan is confirmable because it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

BB. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code – 11 U.S.C. § 1129(a)(9).

62. The treatment of Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Claims for Restructuring Expenses under **Article II** of the Plan, and of Other Priority Claims under **Article III** of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

CC. Acceptance by At Least One Impaired Class – 11 U.S.C. § 1129(a)(10).

63. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Affidavit and Voting Report, Classes 3 and 6, which are Impaired, voted to accept the Plan by the requisite number and amount of Claims, determined without including any acceptance of the Plan by any insider (as such term is defined in section 101(31) of the Bankruptcy Code), as specified under the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(10) of the Bankruptcy Code are satisfied.

DD. Feasibility – 11 U.S.C. § 1129(a)(11).

64. The Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code. The Meghji Declaration, the financial projections attached as **Exhibit B** to the Disclosure Statement, and the other evidence supporting Confirmation of the Plan proffered or adduced by the Debtors at, prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions;

(c) have not been rebutted by other evidence; (d) establish that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors or their successors under the Plan, except as may be provided in the Plan; and (e) establish that the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan, including on account of any contingent, unliquidated, and other Disputed Claims that ultimately become Allowed after the Effective Date. Accordingly, the Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code.

EE. Payment of Fees – 11 U.S.C. § 1129(a)(12).

65. **Article XII.D** of the Plan provides for the payment of all fees payable by the Debtors under 28 U.S.C. § 1930(a). Accordingly, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

FF. Continuation of Employee Benefits – 11 U.S.C. § 1129(a)(13).

66. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code. **Article IV.L** of the Plan provides that, as of the Effective Date, all obligations related to the Deferred Compensation Plan are assumed and all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

GG. Non-Applicability of Certain Sections – 11 U.S.C. § 1129(a)(14), (15), and (16).

67. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not non-profit corporations.

HH. "Cram Down" Requirements – 11 U.S.C. § 1129(b).

68. The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that Classes 7 and 8 are deemed to reject the Plan (to the extent set off,

settled, addressed, distributed, contributed, merged, cancelled, or released), the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. *First*, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. *Second*, the Plan does not discriminate unfairly with respect to Classes 7 and 8 because all similarly situated creditors and interest holders will receive substantially similar treatment on account of their Claims and Interests irrespective of Class. *Third*, the Plan has been proposed in good faith, is reasonable, no Holder of a Claim or Interest in a Class senior to each such Class is receiving more than 100% on account of its Claim or Interest, and the treatment provided to Classes 7 and 8 has no economic substance and is intended to allow the Debtors to modify their intercompany structure and liabilities in order to implement the Restructuring Transactions under the Plan. *Fourth*, no Holders of an Intercompany Claim or Intercompany Interest has objected to the reinstatement of Zachry Interests under the Plan. Accordingly, the Plan is fair and equitable to all Holders of Claims and Interests in Classes 7 and 8. Therefore, the Plan satisfies section 1129(b) of the Bankruptcy Code and can be confirmed.

II. Only One Plan – 11 U.S.C. § 1129(c).

69. The Plan (including previous versions thereof) is the only chapter 11 plan filed in each of these Chapter 11 Cases and, accordingly, satisfies section 1129(c) of the Bankruptcy Code.

JJ. Principal Purpose of the Plan – 11 U.S.C. § 1129(d).

70. As evidenced by its terms, the principal purpose of the Plan is to reorganize the Debtors, and not to avoid such obligations. Further, no Governmental Unit has requested that the Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. Accordingly, the requirements of section 1129(d) of the Bankruptcy Code have been satisfied.

KK. Not Small Business Cases – 11 U.S.C. § 1129(e).

71. None of these Chapter 11 Cases is a "small business case," as that term is defined in the Bankruptcy Code, and accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

LL. Good Faith Solicitation – 11 U.S.C. § 1125(e).

72. The Debtors and each of the Released Parties and Exculpated Parties have acted fairly, in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code, and in a manner consistent with the Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws, and regulations in connection with all of their respective activities relating to support and Consummation of the Plan, including the negotiation, execution, and delivery of the A&R Credit Facility Documents, the Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, the Exit Intercreditor Agreement, and the Parent Capital Contribution, the solicitation and tabulation of votes on the Plan, and the activities described in section 1125 of the Bankruptcy Code, as applicable, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code, and solicitation of acceptances of the Plan, as applicable, are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

73. The Debtors and their Related Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section 1125(g), with regard to the distribution of recoveries under the Plan and therefore are not, and on account of such distributions will 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 distributions made pursuant to the Plan, so long as such distributions are made consistent with and pursuant to the Plan and this Order.

MM. Satisfaction of Confirmation Requirements.

74. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

NN. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.

75. Each of the conditions precedent to the Effective Date, as set forth in **Article IX.A** of the Plan, has been or is reasonably likely to be satisfied or waived in accordance with **Article IX.B** of the Plan.

OO. Implementation.

76. All documents and agreements necessary to implement the Plan, including the Plan Supplement, and all other relevant and necessary or desirable documents have been negotiated in good faith and at arm's-length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements, not avoidable and not in conflict with any federal, state, or foreign law. Consummation of the transactions contemplated by each such document or agreement is in the best interest of the Debtors, their Estates, and Holders of Claims. The Debtors have exercised reasonable business judgment in determining which documents and agreements to enter into and have provided sufficient and adequate notice of such documents and agreements.

PP. Disclosure of Facts.

77. The Debtors have disclosed all material facts regarding the Plan, including with respect to the Restructuring Transactions, and the fact that each Reorganized Debtor will emerge from its Chapter 11 Case as a validly existing corporation, limited liability company, partnership, or other form, as applicable, with separate assets, liabilities, and obligations.

QQ. Good Faith.

78. The Debtors, the Committee, the Released Parties, and the Exculpated Parties have been, are, and will continue to be acting in good faith within the meaning of section 1125(e) of the

Bankruptcy Code if they proceed to: (a) consummate the Plan, the Restructuring Transactions, the A&R Credit Facility, the Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, the Exit Intercreditor Agreement, the Parent Capital Contribution, and the agreements, settlements, transactions, transfers, and other actions contemplated thereby, regardless of whether such agreements, settlements, transactions, transfers, and other actions are expressly authorized by this Order; and (b) take any actions authorized and directed or contemplated by this Order.

RR. A&R Credit Facility.

79. The terms and conditions of the A&R Credit Facility and the Debtors' entry into the A&R Credit Facility Documents, including all actions, undertakings, and transactions contemplated thereby, and payment of all fees, indemnities, and expenses provided for thereunder, are essential elements of the Plan, necessary for Confirmation and Consummation of the Plan, critical to the overall success and feasibility of the Plan, and in the best interests of the Debtors, the Estates, and Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining to enter into the A&R Credit Facility and have provided adequate notice thereof. The A&R Credit Facility was negotiated in good faith and at arm's-length among the Debtors, the A&R Credit Facility Agent, the A&R Credit Facility Lenders, and any credit extended and loans made to the Reorganized Debtors by the A&R Credit Facility Lenders and any fees and expenses paid thereunder are deemed to have been extended, issued, and made in good faith and for legitimate business purposes. The execution, delivery, and performance by the Debtors or the Reorganized Debtors, as applicable, of any of the A&R Credit Facility Documents, and any agreements related thereto and compliance by the Debtors or the Reorganized Debtors, as applicable, with the terms thereof, is authorized by, and will not conflict with, the terms of the Plan or this Order.

SS. Sunbelt Promissory Note.

80. The terms and conditions of the Sunbelt Promissory Note and the Debtors' entry into the Sunbelt Promissory Note, including all actions, undertakings, and transactions contemplated thereby, are essential elements of the Plan, necessary for Confirmation and Consummation of the Plan, critical to the overall success and feasibility of the Plan, and in the best interests of the Debtors, the Estates, and Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining to enter into the Sunbelt Promissory Note and have provided adequate notice thereof. The Sunbelt Promissory Note was negotiated in good faith and at arm's-length among the Debtors and Sunbelt, and the Sunbelt Promissory Note is deemed to have been extended, issued, and made in good faith and for legitimate business purposes. The execution, delivery, and performance by the Debtors or the Reorganized Debtors, as applicable, of the Sunbelt Promissory Note, and any agreements related thereto and compliance by the Debtors or the Reorganized Debtors, as applicable, with the terms thereof, is authorized by, and will not conflict with, the terms of the Plan or this Order.

TT. GUC Promissory Notes.

81. The terms and conditions of the GUC Promissory Notes and the Debtors' entry into the GUC Note Documents, including all actions, undertakings, and transactions contemplated thereby, and payment of all fees, indemnities, and expenses provided for thereunder, are essential elements of the Plan, necessary for Confirmation and Consummation of the Plan, critical to the overall success and feasibility of the Plan, and in the best interests of the Debtors, the Estates, and Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining to enter into the GUC Note Documents and have provided adequate notice thereof. The GUC Note Documents were negotiated in good faith and at arm's-length among the Debtors and the Committee, and the GUC Promissory Notes and any fees and expenses paid thereunder

are deemed to have been extended, issued, and made in good faith and for legitimate business purposes. The execution, delivery, and performance by the Debtors or the Reorganized Debtors, as applicable, of any of the GUC Note Documents, and any agreements related thereto and compliance by the Debtors or the Reorganized Debtors, as applicable, with the terms thereof, is authorized by, and will not conflict with, the terms of the Plan or this Order.

UU. Exit Intercreditor Agreement

82. The terms and conditions of the Exit Intercreditor Agreement (which shall be consistent in all material respects with the terms set forth in the term sheet attached hereto as **Exhibit B**, the "**Exit ICA Term Sheet**"), and the Debtors' entry into the Exit Intercreditor Agreement, including all actions, undertakings, and transactions contemplated thereby, are essential elements of the Plan, necessary for Confirmation and Consummation of the Plan, critical to the overall success and feasibility of the Plan, and in the best interests of the Debtors, the Estates, and Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining to enter into the Exit Intercreditor Agreement and have provided adequate notice thereof. The Exit ICA Term Sheet setting forth the material terms of the Exit Intercreditor Agreement was negotiated in good faith and at arm's-length among the Debtor, the Committee, the A&R Credit Facility Agent, and Sunbelt, and the Exit Intercreditor Agreement is deemed to have been extended, issued, and made in good faith and for legitimate business purposes. The execution, delivery, and performance by the Debtors or the Reorganized Debtors, as applicable, of the Exit Intercreditor Agreement, and any agreements related thereto and compliance by the Debtors or the Reorganized Debtors, as applicable, with the terms thereof, is authorized by, and will not conflict with, the terms of the Plan or this Order.

Order

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

83. **Findings of Fact and Conclusions of Law.** The above findings of fact and conclusions of law, as well as any additional findings of fact and conclusions of law announced by the Court at the Combined Hearing, are hereby incorporated in this Order.

84. **Approval of the Disclosure Statement.** The Disclosure Statement is approved in all respects on a final basis pursuant to section 1125 of the Bankruptcy Code.

85. **Confirmation of the Plan.** The Plan, including (a) all modifications to the Plan Filed with the Court prior to or during the Combined Hearing and (b) all documents incorporated into the Plan through the Plan Supplement is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. All terms of the Plan and the Plan Supplement are incorporated herein by reference and are an integral part of this Order. The failure to specifically include or refer to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document in this Order does not diminish or impair the effectiveness or enforceability of such article, section, or provision.

86. This Order approves the Plan Supplement, including the documents contained therein, as they may be amended through and including the Effective Date in accordance with and as permitted by the Plan. The terms of the Plan, the Plan Supplement, and the exhibits thereto are incorporated herein by reference and are an integral part of this Order; *provided* that if there is any direct conflict between the terms of the Plan (including the Plan Supplement) and the terms of this Order, the terms of this Order shall control solely to the extent of such conflict.

87. **Objections Overruled.** All parties have had a full and fair opportunity to be heard on all issues raised by the objections to final approval of the Disclosure Statement and

Confirmation of the Plan, and the objections have been fully and fairly litigated or resolved, including by agreed-upon provisions as set forth in this Order. All objections, responses, statements, reservations of rights, and comments in opposition, if any, to final approval of the Disclosure Statement or Confirmation of the Plan that have not been withdrawn, waived, settled, or resolved prior to the Combined Hearing or otherwise resolved on the record of the Combined Hearing or in this Order are hereby **OVERRULED** and **DENIED** on the merits, with prejudice. All objections to entry of this Order or to the relief granted herein that were not timely filed and served prior to the Objection Deadline are deemed waived and forever barred. All withdrawn objections are deemed withdrawn with prejudice.

88. **Headings.** Headings utilized herein are for convenience and reference only and do not constitute a part of the Plan or this Order for any other purpose.

89. **Plan Modifications**. The Plan includes certain modifications made after the Debtors solicited approval from Holders of Claims entitled to vote (the "**Plan Modifications**"). The Plan Modifications do not materially adversely affect the treatment of any Claim or Interest under the Plan. After giving effect to the Plan Modifications, the Plan continues to satisfy the requirements of sections 1122 and 1123 of the Bankruptcy Code. The Debtors provided due and sufficient notice of the Plan Modifications under the circumstances. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

90. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, Holders of Claims who voted to accept the Plan or who are

conclusively presumed to accept the Plan are deemed to have accepted the Plan. No Holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

91. **No Action Required.** Under the provisions of the Delaware General Corporation Law, including section 303 thereof, and the comparable provisions of the Delaware Limited Liability Company Act, the Texas Business Organizations Code (including section 101.866 thereof), section 1142(b) of the Bankruptcy Code, and any other comparable provisions under applicable law, no action of the respective directors, equity holders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Restructuring Transactions, and any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan.

92. **Binding Effect.** Pursuant to **Article XII.A** of the Plan, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and this Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims and Interests (irrespective of whether Holders of such Claims or Interests voted or are deemed to have accepted the Plan, voted or are deemed to have rejected the Plan, or failed to vote to accept or reject the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors or the Reorganized Debtors, as applicable. All Claims and Interests shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan and this Order, regardless of whether any such Holder of a Claim or Interest has voted on the Plan. Pursuant to section

1142(a) of the Bankruptcy Code, the Plan, the Plan Supplement, and this Order shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

93. **Incorporation by Reference.** The terms and provisions of the Plan, the Plan Supplement, all other relevant and necessary documents, and each of the foregoing's schedules and exhibits are, on and after the Effective Date, incorporated herein by reference and are an integral part of this Order.

94. **Vesting of Assets in the Reorganized Debtors.** Except as otherwise provided in the Plan, this Order, or any agreement, instrument, or other document incorporated herein, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, Causes of Action, or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan or this Order, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

95. **Cancellation of Existing Agreements and Interests.** On the Effective Date, except with respect to the A&R Credit Facility, the Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, the Parent Capital Contribution, the Zachry Interests, the Prepetition Intercreditor Agreement, the Exit Intercreditor Agreement, the GPX Settlement Documents, the GPX L/C (subject to **Article IV.B** of the Plan), the GPX Parent Guarantee (subject to **Article IV.B** of the Plan), all Employee Obligations assumed pursuant to **Article IV.L** of the Plan, all Indemnification Obligations assumed pursuant to **Article IV.M** of the Plan, and all Executory Contracts and Unexpired Leases assumed pursuant to **Article V.A** of the Plan, or to the

extent otherwise provided in the Plan or this Order, all notes, instruments, certificates, and other documents evidencing Claims or Interests, including credit agreements and indentures, shall be cancelled and the obligations of the Debtors and any non-Debtor Affiliate thereunder or in any way related thereto shall be deemed satisfied in full, cancelled, discharged, and of no force or effect. Holders of, or parties to, such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights, distributions, and treatment provided for pursuant to the Plan.

96. Notwithstanding the preceding paragraph, any credit agreement or other instrument that governs the rights, claims, and remedies of the Holder of a Claim shall continue in full force and effect for the limited purposes of allowing Holders of Allowed Claims to receive distributions under the Plan and permitting the Reorganized Debtors and any other distribution agent, as applicable, to make distributions on account of the applicable Claims.

97. On the Effective Date, each holder of a certificate or instrument evidencing a Claim or Interest that is discharged by the Plan shall be deemed to have surrendered such certificate or instrument in accordance with the applicable indenture or agreement that governs the rights of such holder of such Claim or Interest. Such surrendered certificate or instrument shall be deemed cancelled as set forth in, and subject to the exceptions set forth in, **Article IV.I** of the Plan.

98. **Organizational Documents.** On the Effective Date, the Reorganized Debtors shall be deemed to adopt and re-affirm the Organizational Documents without any further action, notice, or approval. The Reorganized Debtors shall be authorized to adopt any agreements, documents, and instruments, and to take any other action contemplated under the Plan as necessary to consummate the Plan. To the extent any Organizational Document is modified in connection with

Consummation of the Plan, each Reorganized Debtor, as applicable, will file such Organizational Document with the applicable Secretary of State and/or other applicable authorities in its respective state, province, or country of incorporation in accordance with the corporate laws of the respective state, province, or country of incorporation to the extent such filing is required for each such document. The Organizational Documents shall prohibit the issuance of non-voting Equity Securities to the extent required under section 1123(a)(6) of the Bankruptcy Code. After the Effective Date, each Reorganized Debtor may amend and restate its constituent and governing documents as permitted by the laws of its jurisdiction of formation and the terms of such documents.

99. **Effectiveness of All Actions.** All actions contemplated by the Plan and the Plan Supplement are hereby effective and authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Order, without further application to, or order of the Court, or further action by the respective officers, directors, managers, members, or equity holders of the Debtors or the Reorganized Debtors and with the effect that such actions had been taken by the unanimous action, consent, approval and vote of each of such officers, directors, managers, members, or equity holders.

100. **Restructuring Transactions.** The Restructuring Transactions set forth in the Plan are hereby approved and authorized in all respects. After the Confirmation Date, the Debtors or Reorganized Debtors, the GUC Note Administrative Agent, or the GUC Note Collateral Agent, as applicable, are authorized to consummate the Restructuring Transactions and may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan. Any transfers of assets or equity interests effected, or any

obligations incurred through the Restructuring Transactions are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

101. **Distributions.** The procedures governing distributions contained in **Article VI** of the Plan shall be, and hereby are, approved in their entirety.

102. **Contingent, Unliquidated, and Disputed Claims.** The procedures for resolving contingent, unliquidated, and disputed claims contained in **Article VII** of the Plan shall be, and hereby are, approved in their entirety. For the avoidance of doubt, no distributions shall be made on account of any Claim under the Plan, including any contingent, unliquidated, or other Disputed Claim, unless and until such Claim becomes Allowed in accordance with **Article VII** of the Plan.

103. **Claims Register.** Any Claim or Interest or any Claim or Interest that has been paid, satisfied, amended, compromised, settled, or superseded may be adjusted or expunged on the Claims Register by the Debtors or the Reorganized Debtors without the Debtors or the Reorganized Debtors having to file an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest without any further notice to or action, order, or approval of the Court.

104. **A&R Credit Facility.** On the Effective Date, the Reorganized Debtors shall enter into the A&R Credit Facility, the terms of which will be set forth in the A&R Credit Facility Documents. Confirmation of the Plan pursuant to this Order shall be deemed final approval of each of the A&R Credit Facility, the A&R Credit Facility Documents, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and authorization for the Reorganized Debtors to enter into and execute the A&R Credit Facility Documents, and such other

documents as may be required to effectuate the A&R Credit Facility. Effectiveness of the A&R Credit Agreement shall be deemed to bind all Holders of Prepetition Credit Facility Claims and all A&R Credit Facility Lenders as if each such Holder or A&R Credit Facility Lender had executed the A&R Credit Facility Agreement with appropriate authorization.

105. **Sunbelt Promissory Note.** On the Effective Date, the Reorganized Debtors shall issue the Sunbelt Promissory Note. Confirmation of the Plan pursuant to this Order shall be deemed final approval of the Sunbelt Promissory Note, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, and authorization for the Reorganized Debtors to enter into and execute the Sunbelt Promissory Note, and such other documents as may be required to effectuate the Sunbelt Promissory Note.

106. **GUC Promissory Notes.** On the Effective Date, the Reorganized Debtors shall enter into the GUC Note Documents and issue the GUC Promissory Notes. The Reorganized Debtors shall issue additional GUC Promissory Notes from time to time after the Effective Date for the benefit of Holders of General Unsecured Claims in accordance with the Plan as and to the extent such Claims are Allowed. Confirmation of the Plan pursuant to this Order shall be deemed final approval of each of the GUC Promissory Notes, the GUC Note Purchase Agreement, the GUC Note Documents, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and authorization for the Reorganized Debtors to enter into and execute the GUC Note Documents, and such other documents as may be required to effectuate the GUC Promissory Notes.

107. **Collateral**. On the Effective Date, all of the Liens and security interests to be granted in accordance with the A&R Credit Facility Documents, Sunbelt Promissory Note, and GUC Note Documents shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the A&R Credit Facility Documents, the Sunbelt Promissory Note, the GUC Note Documents, and the Exit Intercreditor Agreement, as applicable; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the A&R Credit Facility Documents, the Sunbelt Promissory Note, the GUC Note Documents, and the Exit Intercreditor Agreement, as applicable; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of the Plan and the Order (it being understood that perfection shall occur automatically by virtue of the entry of the Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

108. **Zachry Interests.** On the Effective Date, Zachry Interests shall be Reinstated on the Effective Date, and the legal, equitable, and contractual rights to which Holders of Zachry Interests are entitled shall remain unaltered as provided in the Organizational Documents.

109. **Effectuating Documents; Further Transactions.** On and after the Effective Date, the Reorganized Debtors, and their respective officers and boards of directors and managers, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of the Plan the name of and on behalf of the Reorganized Debtors without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

110. **Non-Voting Equity Securities**. The Debtors are not issuing new equity securities, and all Interests are not impaired and are being Reinstated under the Plan, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

111. **Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Interests, and controversies resolved under the Plan, including with respect to General Unsecured Claims and GPX Claims as set forth in the Plan, and the entry of this Order constitutes approval of such compromises and settlements under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019.

112. **GPX Settlement.** This Court approved the GPX Settlement on a final basis in the GPX Final Settlement Order. The terms of the GPX Settlement, as approved by the GPX Final Settlement Order, are incorporated into, and are an integral part of, the Plan and this Order. The GPX Settlement Parties shall comply with the terms of the GPX Settlement Documents through and following the Effective Date, and the terms of the GPX Settlement and the GPX Settlement Documents remain binding on the GPX Settlement Parties and, as applicable, the A&R Credit Facility Agent and A&R Credit Facility Lenders.

113. **GPX Excess Claims Stipulation.** The terms of the GPX Excess Claims Stipulation are fair, equitable, within the range of reasonableness, and in the best interests of the Debtors, their Estates, and all vendors and subcontractors asserting Claims related to the GPX Project. Entry of this Order shall constitute the entry of an order approving the GPX Excess Claims Stipulation, and each term and agreement set forth therein in their entirety, under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. The GPX Excess Claims Stipulation, including each paragraph therein, is incorporated by reference into this paragraph and Order as if set forth fully herein, and is an integral part of the Plan and this Order.

114. For the avoidance of doubt, and as set forth in the GPX Excess Claims Stipulation, (i) the Debtors and Golden Pass shall not seek recovery from each other on account of any potential claims related to the GPX Project other than as set forth in the GPX Excess Claims Stipulation; (ii) the Debtors have no payment obligations, liability, or any other responsibility with respect to any GPX Claims identified on Schedule 1 to the GPX Excess Claims Stipulation or any Payable GPX Claims (as defined in the GPX Excess Claims Stipulation) identified on Schedule 2, Schedule 3, or Schedule 4 to the GPX Excess Claims Stipulation, except to the extent any GPX Claim not listed on the Schedules to the GPX Excess Claims Stipulation becomes an Allowed Claim or is Allowed in an amount higher than the amounts set forth on the Schedules through the Debtors' proof of claim resolution process in the Court, in which case the Debtors shall resolve and satisfy such Claims (in the amount that is higher than the amount in the Schedules, if any) pursuant to the terms of the Plan; (iii) Golden Pass has no further liability, obligation, or responsibility whatsoever under the GPX Settlement or any applicable agreement or law with respect to any Claims filed or scheduled in the Debtors' bankruptcy cases, including without limitation, any Allowed Claims, other than the Payable GPX Claims in the amounts identified on

Schedule 2, Schedule 3; and Schedule 4 to the GPX Excess Claims Stipulation; (iv) other than the Payable GPX Claims, all GPX Claims have been resolved and satisfied as of entry of this Order and are subject to each of the release, discharge, and injunctive relief provisions in the Plan, including as set forth in **Articles IV** and **VIII** of the Plan, and Golden Pass shall have no further liability, obligation, or responsibility whatsoever with respect to such claims; (v) upon Golden Pass's payment of the Payable GPX Claims in the amounts set forth in Schedule 2, Schedule 3, and Schedule 4 to the GPX Excess Claims Stipulation, the Payable GPX Claims will be deemed fully satisfied and subject to each of the release, discharge, and injunctive relief provisions in the Plan, including as set forth in **Articles IV** and **VIII** of the Plan, and Golden Pass shall have no further liability, obligation, or responsibility whatsoever with respect to such claims; (vi) Chiyoda, CB&I, and the current Chiyoda-CB&I joint venture on the GPX Project ("**CCJV-GPX**") shall have no further liability, obligation, or responsibility whatsoever with respect to GPX Claims satisfied by Golden Pass; and (vii) all release, discharge, and injunctive relief provisions in the Plan related to GPX Claims are approved as set forth herein and the Plan for the benefit of the Debtors, Golden Pass, and their Related Parties.

115. Consistent with the terms of the GPX Excess Claims Stipulation, upon entry of this Order and occurrence of the Effective Date of the Plan that incorporates, approves, and implements the stipulations and schedules of the GPX Excess Claims Stipulation, the GPX L/C and Parent Guarantee (as defined in the GPX Settlement Term Sheet) shall be deemed automatically reduced to the amount of the GPX L/C Scheduled Draws *less* the amount of the February 1, 2025 GPX L/C Scheduled Draw already paid by the Debtors in Cash pursuant to that certain letter agreement dated January 31, 2025, without any further notice to or action, order, or approval by any Entity or this Court. The Reorganized Debtors may pay any future GPX L/C Scheduled Draws in Cash subject

to the terms of the GPX Excess Claims Stipulation. The Reorganized Debtors shall pay the Excess Claims Amount (as defined in the GPX Excess Claims Stipulation) in Cash on or before August 1, 2026, which shall be an obligation solely of the Debtors (and their successors) and no other party. The Reorganized Debtors, Golden Pass, and the Prepetition Credit Facility Agent are authorized to execute all agreements and other documents, and to take any other ministerial actions, as may be necessary to effectuate the terms of this paragraph. Notwithstanding anything to the contrary herein or in any A&R Credit Facility Documents, the terms of the GPX Settlement with respect to the GPX L/C are modified solely as expressly set forth in the GPX Excess Claims Stipulation and incorporated in this paragraph.

116. Notwithstanding anything to the contrary in this Order, the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Transactions, or other related Plan documents (the "**Plan Documents**"), the terms of the GPX Excess Claims Stipulation shall not impair or affect any rights of and between Golden Pass, Chiyoda, CB&I, or the CCJV-GPX unrelated to GPX Claims satisfied, released, or otherwise resolved by the GPX Settlement, the GPX Excess Claims Stipulation, or the Plan.

117. For the avoidance of doubt, Golden Pass is not a Releasing Party under the Plan other than with respect to the Debtors and the Debtors' Related Parties consistent with the GPX Settlement.

118. **Release, Exculpation, Discharge, Injunction, and Related Provisions.** The release, exculpation, discharge, injunction, and related provisions embodied in the Plan, including those contained in **Article VIII.A–H** of the Plan shall be, and hereby are, approved and authorized in their entirety and shall be effective and binding on all Persons and Entities, to the extent provided in the Plan, without further order or action by the Court.

119. **Debtor Release.** Entry of this Order shall constitute the Court's approval of the Debtor Release, including by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Court's finding that the Debtor Release is: (a) consensual on the part of the Releasing Parties; (b) essential to the Confirmation of the Plan; (c) given in exchange for good and valuable consideration provided by the Released Parties, including the payment in full of all General Unsecured Claims pursuant to the terms of the Plan; (d) a good-faith settlement and compromise of the Claims and Causes of Action released by the Debtor Release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Debtor Releasing Parties asserting any Claim or Cause of Action released pursuant to the Debtor Release against a Released Party.

120. 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 on 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. Upon entry of this Order, any and all such rights, claims, and Causes of Action set forth in this paragraph 120 and **Article VIII.C** shall be fully preserved and revest in the Reorganized Debtors pursuant to the Plan and this Order.

121. **Third-Party Release.** Entry of this Order shall constitute the Court's approval of the Third-Party Release, including by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Court's finding that the Third-Party Release is: (a) consensual on the part of the Releasing Parties; (b) essential to the Confirmation of the Plan; (c) given in exchange for good and valuable consideration provided by the Released Parties,

including the payment in full of all General Unsecured Claims pursuant to the terms of the Plan; (d) a good-faith settlement and compromise of the Claims and Causes of Action released by the Third-Party Release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any Claim or Cause of Action against a Released Party. As set forth on the record at the Combined Hearing and in **Article I.A.128.n** of the Plan, each Related Party of a Releasing Party shall be a Releasing Party solely to the extent an applicable principal Releasing Party is legally entitled to bind such Related Party to the releases contained in the Plan under applicable law.

122. **Treatment of Executory Contracts and Unexpired Leases.** Pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code, upon the occurrence of the Effective Date, the Plan provides for the assumption or rejection of certain Executory Contracts and Unexpired Leases. The provisions governing the treatment of Executory Contracts and Unexpired Leases set forth in **Article V** of the Plan are hereby approved in their entirety. The Debtors' determinations regarding the assumption or rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan and are in the best interests of the Debtors, their Estates, Holders of Claims or Interests, and other parties in interest in these Chapter 11 Cases.

123. **Assumption and Assignment of Contracts and Leases.** On the Effective Date, each Executory Contract and Unexpired Lease shall be deemed assumed, unless such Executory Contract and Unexpired Lease: (1) is identified on the Rejection List; (2) previously expired or terminated pursuant to its own terms; (3) was previously assumed or rejected by the Debtors, including pursuant to the GPX Settlement; (4) is the subject of a motion or notice to reject pending

as of the Effective Date; or (5) has an effective date of rejection that is after the Effective Date, without the need for any further notice to or action, order, or approval of the Court, under section 365 of the Bankruptcy Code and the payment of Cure Claims, if any, shall be paid in accordance with **Article V.C** of the Plan. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates. Except as otherwise provided in the Plan or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all amendments, assignments, attachments, change orders, confidentiality agreements, exhibits, extensions, guaranties, hold harmless agreements, modifications, restatements, revisions, schedules, side letters, supplements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Amendments, assignments, attachments, change orders, confidentiality agreements, exhibits, extensions, guaranties, hold harmless agreements, modifications, restatements, revisions, schedules, side letters, and supplements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

124. The provisions governing the treatment of Executory Contracts and Unexpired Leases set forth in **Article V** of the Plan (including the procedures regarding the resolution of any and all disputes concerning the assumption and assignment, as applicable, of such Executory Contracts and Unexpired Leases) shall be, and hereby are, approved in their entirety. For the avoidance of doubt, if there is any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning

of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, and if such dispute is not resolved in a manner acceptable to the Reorganized Debtors in their sole discretion, the Reorganized Debtors shall have the right to add the applicable Executory Contract or Unexpired Lease to the Rejection List, in which case such Executory Contract or Unexpired Lease shall be deemed rejected as of the Effective Date and no Cure Claim shall be owed in respect of such Executory Contract or Unexpired Lease. The Reorganized Debtors may determine to add an Executory Contract or Unexpired List to the Rejection List pursuant to this paragraph before or after the Court rules on any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption. Following the resolution of any dispute regarding any Cure Claim, provided that the Reorganized Debtors do not elect to add the applicable Executory Contract or Unexpired Lease to the Rejection List, payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute or as may be agreed by the Reorganized Debtors and the counterparty to the Executory Contract or Unexpired Lease.

125. Nothing in this Order or in any notice or any other document is or shall be deemed an admission by the Debtor or Reorganized Debtors that any assumed contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

126. Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable Cure Claim pursuant to **Article V.C** of the Plan shall result in the full release and satisfaction of any Cure Claims, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory

Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to this Order, and for which any Cure Claim has been fully paid pursuant to **Article V.C** of the Plan, shall be deemed Disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Court.

127. All Claims for damages resulting from the rejection of an Executory Contract or Unexpired Lease shall be asserted in accordance with **Article V.B** of the Plan and shall be treated as General Unsecured Claims pursuant to **Article III.C** of the Plan and may be objected to in accordance with the provisions of **Article VII** of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules. The Reorganized Debtors shall reconcile all Claims for damages resulting from the rejection of an Executory Contract or Unexpired Lease after the deadline to file such Claims has expired, and may object to any such Claims as set forth in the Plan.

128. **Deferred Compensation Plan and Other Employee Obligations.** Subject to **Article V** of the Plan, all written employment, confidentiality, non-competition agreements, bonus, gainshare and incentive programs, discretionary bonus plans or variable incentive plans regarding payment of a percentage of annual salary based on performance goals and financial targets for certain employees, vacation, holiday pay, severance, retirement, retention, supplemental retirement, executive retirement, pension, deferred compensation (including the Deferred Compensation Plan), indemnification, other similar employee-related agreements or arrangements, retirement income plans, medical, dental, vision, life and disability insurance, flexible spending account, and other health and welfare benefit plans, programs, and arrangements,

and collective bargaining agreements that are in effect immediately prior to the Effective Date with the Debtors, shall be assumed by the Debtors and shall remain in place as of the Effective Date, and the Reorganized Debtors will continue to honor such agreements, arrangements, programs, and plans as of the Effective Date, unless otherwise: (i) provided in the Plan or this Order, (ii) specifically rejected pursuant to a separate order of this Court, (iii) specifically designated as a contract or lease to be rejected on the Rejection List, or (iv) specifically identified in a separate rejection motion Filed by the Debtors. For the avoidance of doubt, the Debtors' assumption of all obligations related to the Deferred Compensation Plan shall include any amounts due and owing to participants that have accrued under the Deferred Compensation Plan following the Petition Date.

129. The Debtors' assumption of such compensation and benefits plans, including the Deferred Compensation Plan, pursuant to the terms of this Plan shall be deemed not to trigger any applicable change of control, immediate vesting, termination, or similar provisions in any applicable plan or program, or an event of "Good Reason" (or a term of like import), in each case as a result of the consummation of the Restructuring Transactions. No counterparty shall have rights under a compensation and benefit plan or program, including the Deferred Compensation Plan, assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

130. Nothing in the Plan or this Order shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action, or other rights with respect to any such contracts, agreements, policies, programs, and plans. For the avoidance of doubt, pursuant to section 1129(a)(13) of the Bankruptcy Code, as of the Effective Date, all retiree benefits (as such

term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable orders of this Court and applicable law.

131. **Indemnification.** All indemnification provisions in place as of the Effective Date (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for (each in their capacities as such) the current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, financial advisors, restructuring advisors, consultants, other professionals of, or acting on behalf of, the Debtors, and the Sureties, as applicable, shall be Reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such current members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, other professionals of, or acting on behalf of, the Debtors, and the Sureties, as provided under the indemnification obligations in place prior to the Effective Date*; provided, however,* nothing in the Plan or this Order shall expand any of the Debtors' indemnification obligations in place as of the Petition Date.

132. **Compliance with Tax Requirements.** Each Holder of an Allowed Claim or Interests that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution. In connection with the Plan, to the extent applicable, the Debtors, the Reorganized Debtors, the Distribution Agent, and any applicable withholding agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting

requirements. Notwithstanding any provision in the Plan to the contrary, the Debtors, the Reorganized Debtors, the Distribution Agent, and any applicable withholding agent, as applicable, are authorized to take all actions necessary or appropriate to comply with applicable withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors and the Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and similar spousal awards, Liens, and encumbrances.

133. **Exemption from Transfer Taxes and Recording Fees.** To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (1) the issuance, reinstatement, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Reorganized Debtors; (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; (5) the grant of collateral as security for any or all of the A&R Credit Facility, the Sunbelt Promissory Note, or the GUC Promissory Notes; (6) the issuance of the GUC Promissory Notes; (7) the issuance of the Sunbelt Promissory Note; or (8) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising

out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

134. **Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring Transactions, and this Order.

135. **Plan Supplement.** Without further order or authorization of this Court, the Debtors, Reorganized Debtors, and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan, unless such modifications require relief under section 1127 of the Bankruptcy Code; *provided, however,* that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alternations, amendments, supplements, or modifications to the Plan Supplement impacting the treatment of Holders of General Unsecured Claims under the

Plan. Execution versions of the documents comprising or contemplated by the Plan Supplement shall constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all mortgages, Liens, deeds of trust, pledges, and security interests purported to be created thereby.

136. **Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Court. The Reorganized Debtors shall pay Professional Fee Claims in Cash in the amount the Court allows as soon as practicable after such Professional Fee Claims are Allowed.

137. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.

138. **Exemption from Securities Laws.** To the extent applicable, the offer, sale, issuance, and distribution of the A&R Credit Facility, GUC Promissory Notes, and Sunbelt Promissory Note shall be exempt pursuant to section 1145 of the Bankruptcy Code from registration under the Securities Act, and the instruments shall be freely transferable and resaleable by non-affiliates of the Debtors and Reorganized Debtors, subject to any contractual limitations or restrictions under applicable non-bankruptcy law.

139. **Restructuring Expenses.** The Claims for Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date (or, with respect to necessary post-Effective Date matters, after the Effective Date), shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein, without any requirement to File a fee application with the Court, without the need for itemized time detail, or without any requirement for Court review or approval. All Claims for Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Effective Date; *provided, however*, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Effective Date, invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. After the Effective Date, the Debtors and Reorganized Debtors (as applicable) shall continue to pay when due and payable in the ordinary course of their business any unpaid Restructuring Expenses that were incurred on, before, or after the Effective Date.

140. **Term of Injunctions or Stays.** Unless otherwise provided in the Plan or in this Order, all injunctions or stays arising under or entered during these Chapter 11 Cases under sections 105 and 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

141. **Nonseverability of Plan Provisions Upon Confirmation.** Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted

or modified without the Debtors' or Reorganized Debtors' consent, as applicable; and (c) non-severable and mutually dependent.

142. **Post-Confirmation Modifications.** Without the need for further order or authorization of the Court, the Debtors or the Reorganized Debtors, as applicable, are authorized and empowered to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan. The Debtors and the Reorganized Debtors expressly reserve their respective rights to revoke or withdraw, or to alter, amend, or modify materially the Plan with respect to such Debtors or Reorganized Debtors, one or more times after Confirmation, and any such alteration, amendment, or modification shall be considered a modification of the Plan and shall be made in accordance with section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and **Article X.A** of the Plan; *provided, however*, that the Debtors shall also obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan (including the Plan Supplement) impacting the treatment of Holders of General Unsecured Claims under the Plan.

143. **Notice of Entry of Confirmation and Effective Date.** In accordance with Bankruptcy Rules 2002 and 3020(c), no later than seven (7) Business Days after the Effective Date, the Reorganized Debtors shall file with the Court and serve by email and first class mail or overnight delivery service a notice of the entry of this Order and occurrence of the Effective Date (the "**Effective Date Notice**") on all Holders of Claims and/or Interests and to all parties on the *Master Service List* maintained by the Claims and Noticing Agent. Notwithstanding the above, no Effective Date Notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Combined Hearing, but received such notice returned

marked "undeliverable as addressed," "moved, left no forwarding address," or "forwarding order expired," or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity's new address. Mailing of the Effective Date Notice in the time and manner set forth in this paragraph shall be good, adequate, and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c). No further notice of Confirmation of the Plan and the occurrence of the Effective Date will be necessary.

144. **Applicable Non-Bankruptcy Law.** The provisions of this Order, the Plan, and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

145. **Governmental Approvals Not Required.** This Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or Consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments, agreements, amendments, or modifications related thereto, and any other acts referred to in, or contemplated by, the Plan, Plan Supplement, or Disclosure Statement.

146. **Reporting.** Except as otherwise required under the A&R Credit Facility Documents, the Sunbelt Promissory Note, or the GUC Note Documents, after entry of this Order, the Debtors or Reorganized Debtors, as applicable, shall have no obligation to file with the Court, serve on any parties, or otherwise provide any party with any other report that the Debtors or Reorganized Debtors, as applicable, were obligated to provide under the Bankruptcy Code or any order of the Court, including obligations to provide (a) any reports to any parties otherwise required under the "first" and "second" day orders entered in these Chapter 11 Cases and (b) monthly

operating reports (even for those periods for which a monthly operating report was not filed before the Confirmation Date, if any); *provided* that the Debtors and Reorganized Debtors, as applicable, shall comply with the U.S. Trustee's post-confirmation quarterly reporting requirements prior to the closure of the applicable Chapter 11 Case.

147. **Termination of Challenge Period.** The Challenge Period (as defined in the Cash Collateral Order) for all parties in interest shall be terminated as of the Effective Date, and the stipulations, admissions, findings, and releases contained in the Cash Collateral Order at that time shall be binding on the Debtors' estates and all parties in interest.

148. **Authorization to Consummate.** The Debtors and the Reorganized Debtors, as applicable, are authorized to consummate the Plan after the entry of this Order subject to satisfaction or waiver of the conditions precedent to Consummation set forth in **Article IX** of the Plan; *provided, however*, that if the Debtors seek any waiver (in whole or in part) of the conditions precedent in **Article IX.A.1** or **Article IX.A.6**, the Debtors shall obtain the consent of the Committee.

149. **Substantial Consummation.** Consummation of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

150. **Failure of Consummation.** Notwithstanding entry of this Order, if Consummation does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the Debtors or by Holders of Claims or Interests; (2) prejudice in any manner the rights of the Debtors, any Holders of Claims or Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders of Claims or Interests, or any other Entity, respectively.

151. **Reservation of Rights.** Except as expressly set forth in the Plan, the Plan shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to any Entity unless and until the Effective Date has occurred.

152. **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by reference.

153. **Provisions Regarding Committee and Cessation of Fees and Expense Payment.** **Article X.E** of the Plan shall be replaced in its entirety with the following:

> On the Effective Date, the Committee shall dissolve automatically and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases, except with respect to (i) final fee applications of the Professionals asserting Professional Fee Claims, including any appeals in connection therewith, and/or (ii) for purposes of participating in any appeals of the Confirmation Order. The Reorganized Debtors shall no longer be responsible for paying any fees or expenses incurred after the Effective Date by the members of or advisors to the Committee, other than such fees and expenses incurred in connection with any appeals of the Confirmation Order. Any reasonable and documented fees or expenses of the Committee or its advisors incurred between the Confirmation Date and the Effective Date (or after the Effective Date with respect to any appeals of the Confirmation Order) shall be paid by the Debtors or Reorganized

Debtors, as applicable, without the necessity of the filing of a fee application for such fees and expenses.

154. **Provisions Regarding Governmental Units**. Nothing in the Plan or this Order discharges, releases, precludes, or enjoins: (a) any liability to any Governmental Unit that is not a Claim; (b) any Claim of a Governmental Unit arising on or after the Confirmation Date; (c) any police or regulatory liability to a Governmental Unit on the part of any Entity as the owner, permittee, or operator of property after the Confirmation Date; (d) any valid right of setoff or recoupment of any Governmental Unit against any of the Debtors or Reorganized Debtors; or (e) any liability to a Governmental Unit on the part of any Person or Entity other than the Debtors or Reorganized Debtors. Nor shall anything in the Plan or this Order: (a) enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence; (b) divest any court, commission, or tribunal of jurisdiction to resolve any matters relating to the liabilities and/or Claims set forth in this paragraph; (c) confer in this Court jurisdiction over any matter over which it would not have jurisdiction under 28 U.S.C. § 1334; or (d) authorize the transfer or assignment of any Governmental Unit license, permit, registration, authorization, or approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order or the Plan shall affect any setoff or recoupment rights of any Governmental Unit. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or the Plan or to adjudicate any defense asserted under this Order or the Plan. The Debtors' and Reorganized Debtors' rights and defenses under applicable non-bankruptcy law with respect to the foregoing are fully preserved. For the avoidance of doubt, the term "Governmental Unit" includes federally recognized Indian tribes and applicable state taxing authorities.

155. **Provisions Regarding Texas State Taxing Authorities.** Notwithstanding anything to the contrary in the Plan Documents:

a. The Claims of the Texas Comptroller of Public Accounts, Revenue Accounting Division and the Texas Workforce Commission (together, the "**Texas State Taxing Authorities**") shall be reconciled by the Reorganized Debtors and the Texas State Taxing Authorities in the ordinary course of business following the Effective Date. Once any Claim by the Texas State Taxing Authorities becomes an Allowed Claim under the Plan, the Reorganized Debtors shall pay such Allowed Claim as an Other Priority Claim, along with all accrued state statutory post-petition interest to the extent owed under applicable state law, within 10 days of such Allowance.

b. The setoff or recoupment rights of the Texas State Taxing Authorities shall not be affected by confirmation of the Plan to the extent that such rights relate to (1) a tax refund claim asserted after the Petition Date by any of the Debtors, or (2) a tax return amended after the Petition Date by any of the Debtors. Any setoff or recoupment right of the Texas State Taxing Authorities as of the Petition Date shall not be affected by confirmation if a Proof of Claim or motion filed by the Texas State Taxing Authorities has asserted such right.

c. Should a Debtor or Reorganized Debtor, as applicable, default on a payment to a Texas State Taxing Authority under the terms of the Plan or this Order, the applicable Texas State Taxing Authority shall provide the Debtors or Reorganized Debtors and counsel of record with written notice of default mailed and emailed per **Article XII.H** of the Plan. The Debtors or Reorganized Debtors, as applicable, shall have twenty-one (21) days from the date of the notice of default to cure the default, with failure to do so to result in the applicable Texas State Taxing Authority being free to pursue its state law remedies under the Texas Property Tax Code to collect the full amount of taxes, penalties, and interest owed without further order of the Court or notice to parties.

156. **Provisions Regarding Texas Local Taxing Authorities**. Notwithstanding anything to the contrary in the Plan Documents, the claims of the Texas Local Taxing Authorities[3]

[3] For purposes of this Order, the term "**Texas Local Taxing Authorities**" shall refer to: Randall County Tax Office, Parmer County Appraisal District, Pasadena Independent School District, West Harris County Municipal Utility District, Alief Independent School District, Brazoria County Tax Office, City of Houston, Channelview Independent School District, Harris County Municipal Utility District 285, Maverick County, Sabine Pass Independent School District, Brazos County, Medina County, Bexar County, Cypress-Fairbanks Independent School District, Deer Park Independent School District, Eagle Pass Independent School District, Fort Bend County, Harris County Emergency Service District #09, Harris County Emergency Service District #48, Harris County Emergency Service District #60, City of Houston (where represented by Linebarger), Houston

shall be paid in full, along with all accrued state statutory post-petition interest at the rate of twelve percent (12%) per annum to the extent owed under applicable state law, within 10 days of the Effective Date. The Debtors or Reorganized Debtors shall pay all post-petition ad valorem tax liabilities (tax year 2025 and subsequent tax years) owing to the Texas Local Taxing Authorities in the ordinary course of business as such tax debt comes due and prior to said ad valorem taxes becoming delinquent without the need of the Texas Local Taxing Authorities to file an administrative expense claim and/or request for payment. The Texas Local Taxing Authorities shall retain all statutory tax liens against property of the Debtors or Reorganized Debtors, whether pre- or post-petition, until such outstanding taxes secured by a particular lien are fully paid. The Texas Local Taxing Authorities' lien priority shall not be primed or subordinated by any exit financing approved by the Court in conjunction with the confirmation of the Plan or otherwise. In the event that collateral that secures the claim of one or more of the Texas Local Taxing Authorities is sold or returned to a creditor holding a lien that is junior to that of the Texas Local Taxing Authorities, the Debtors shall first pay all ad valorem property taxes that are secured by such collateral, to the extent that the Debtors are liable for such ad valorem property taxes under applicable non-bankruptcy law. The Distribution Agent shall pay any Allowed Texas Local Taxing Authority claim regardless of whether it does not meet any minimum threshold established pursuant to the Plan or this Order.

157. Should a Debtor or Reorganized Debtor default on a payment to a Texas Local Taxing Authority under the terms of the Plan or this Order, the applicable Texas Local Taxing

Community College System, Houston Independent School District, Jefferson County, Katy Independent School District, Kenedy County, Kleberg County, Lone Star College System, Orange County, Nueces County and City of Pasadena.

Authority shall provide the Debtors or Reorganized Debtors and counsel of record with written notice of default mailed and emailed per **Article XII.H** of the Plan. The Debtors or Reorganized Debtors shall have twenty-one (21) days from the date of the notice of default to cure the default, with failure to do so shall allow the applicable Texas Local Taxing Authority being free to pursue its state law remedies under the Texas Property Tax Code to collect the full amount of taxes, penalties, and interest owed without further order of the Court or notice to parties.

158. **Provisions Regarding CPChem.** Notwithstanding anything to the contrary in the Plan Documents: (i) on the Effective Date, the Reorganized Debtors shall be deemed to have assumed: (a) the Master Agreement for Products and Services Maintenance Agreement, Contract No. CW64524, by and between Zachry Maintenance Services LLC and Chevron Phillips Chemical Company LP ("**CPChem**"), effective July 1, 2023 (as amended, modified or restated from time to time, together with all attachments, exhibits, and ancillary documents, the "**CPChem MSA**"); (b) the Blanket Contract for Engineering Design, Procurement and Construction Services, Contract No. CPC-34116, by and between ZII (with other Zachry contractors also a party through permissible affiliation with ZII) and CPChem, effective October 1, 2020; (c) the Modified Blanket Services Agreement, Contract No. 4600006406, by and between JV Industrial Companies LLC and CPChem, effective April 11, 2006; (d) the OSBL Engineering, Procurement, and Construction Contract, Contract No. USGCII-CNCN-000E4, by and between GTPC, ZII, and Burns & McDonnell Engineering Company, Inc. dated June 28, 2022, (as amended, modified or restated from time to time, together with all attachments, exhibits, and ancillary documents); (e) the Polyethylene Engineering, Procurement and Construction Contract, Contract No. USGCII-CNCN-000E1, by and between GTPC, ZII, and DL USA, Inc., dated July 7, 2022 (as amended, modified, or restated from time to time, together with all attachments, exhibits, and ancillary documents);

and (f) the Blanket Service Agreement, Contract No. 4600005747, effective October 23, 2008, to the extent not superseded by the CPChem MSA; and (g) any active or open purchase order submitted by CPChem to the Debtors under the foregoing agreements (collectively, (a)-(g), the "**CPChem Agreements**"), pursuant to sections 105 and 365(a) of the Bankruptcy Code, without the need for any further notice, action, order, or approval of the Court; (ii) no Cure Claim in Cash shall be paid to CPChem by the Reorganized Debtors on the Effective Date; (iii) assumption of the CPChem Agreements and Consummation of the Plan shall not alter, impair or otherwise modify the rights and obligations of the parties to the CPChem Agreements, including in respect of any claims of the Debtors, the Reorganized Debtors, CPChem, or their respective Affiliates, as applicable, arising at any time under or in relation to the CPChem Agreements, whether such claims are liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, now existing or hereinafter arising; (iv) notwithstanding the commencement of the Chapter 11 Cases and confirmation of the Plan, all obligations of the Debtors, the Reorganized Debtors, and CPChem under the CPChem Agreements shall be satisfied by the Debtors, the Reorganized Debtors, and CPChem, as applicable, in the normal course of business in accordance with the terms of the CPChem Agreements, including, for the avoidance of doubt, any contingent and unliquidated obligations of the Debtors and Reorganized Debtors validly owed to CPChem under the CPChem Agreements; and (v) CPChem is hereby deemed, as of the Effective Date, to have affirmatively opted out of the Third-Party Release provisions of the Plan. For the avoidance of doubt, references to CPChem herein shall refer to both Chevron Phillips Chemical Company, LLC as well as Chevron Phillips Chemical Company, LP.

159. **Provisions Regarding GTPC**. Notwithstanding anything to the contrary in Plan Documents, on the Effective Date: (i) the Reorganized Debtors shall be deemed to have assumed (a) the Engineering, Procurement and Construction Contract dated June 28, 2022 (as amended, modified or restated from time to time, together with all attachments, exhibits and ancillary documents), between Golden Triangle Polymers Company LLC ("**GTPC**"), ZII, and Burns & McDonnell Engineering Company, Inc.; (b) the Engineering, Procurement and Construction Contract dated July 7, 2022 (as amended, modified or restated from time to time, together with all attachments, exhibits and ancillary documents), between GTPC, ZII, and DL USA, Inc.; (c) the Parent Guarantee dated as of June 28, 2022 made by ZHI in favor of GTPC; and (d) the Parent Guarantee dated as of September 29, 2022 made by ZHI in favor of GTPC (collectively, (a)-(d), the "**GTPC EPC Contracts**"), pursuant to sections 105 and 365(a) of the Bankruptcy Code, without the need for any further notice, action, order, or approval of the Court; (ii) no Cure Claim in Cash shall be paid to GTPC by the Reorganized Debtors on the Effective Date; (iii) notwithstanding the forgoing, assumption of the GTPC EPC Contracts and Consummation of the Plan shall not alter, impair or otherwise modify the rights and obligations of the parties to the GTPC EPC Contracts, including in respect of any claims of the Debtors, the Reorganized Debtors, GTPC, or their respective Affiliates, as applicable, arising at any time under or in relation to the GTPC EPC Contracts, whether such claims are liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, now existing or hereinafter arising; (iv) notwithstanding the commencement of the Chapter 11 Cases and confirmation of the Plan, all obligations of the Debtors, the Reorganized Debtors, and GTPC under the GTPC EPC Contracts shall be satisfied by the Debtors, the Reorganized Debtors, and GTPC, as applicable, in the normal course of business in accordance

with the terms of the GTPC EPC Contracts, including, for the avoidance of doubt, any contingent and unliquidated obligations of the Debtors and Reorganized Debtors validly owed to GTPC under the GTPC EPC Contracts; and (v) as an administrative matter, GTPC is hereby deemed, as of the Effective Date and without any further action, notice, or order by any party or this Court, to have (x) withdrawn Claim Nos. 1284 and 1285 as duplicative of Claim Nos. 1242 and 1243 (which shall remain pending) and (y) affirmatively opted out of the Third-Party Release provisions of the Plan.

160. **Provisions Regarding VGPL**. Notwithstanding any other provisions of the Plan, the Plan Supplement, this Order, or any other order of this Court, on the Effective Date, all rights and obligations that have arisen and/or may arise at law related to: (a) those certain guaranties entered into by ZHI for the benefit of Venture Global Plaquemines LNG, LLC ("**VGPL**"), dated as of April 21, 2021 and January 10, 2023 (together, the "**VGPL Guaranties**"), and any other agreements setting forth the parties' respective rights and obligations under the VGPL Guaranties, (collectively, the "**VGPL Guaranty Obligations**"); (b) that certain standby letter of credit No. 777020221583-L, dated as of March 17, 2023, and that certain standby letter of credit No. 777020244050-L, dated as of March 20, 2023, each issued by Standard Chartered Bank on behalf of KZJV LLC in favor of VGPL (together, the "**VGPL Performance Bonds**"); (c) that certain payment bond No. 107261759 (Travelers), K40530423 (Pacific), 30108502 (Continental), dated as of May 25, 2022, issued by Travelers Casualty and Surety Company, Pacific Indemnity Company, and Continental Casualty Company, and that certain payment bond No. 107652660 (Travelers), K40530484 (Pacific), 30161481 (Western), dated as of March 13, 2023, issued by Travelers Casualty and Surety Company, Pacific Indemnity Company, and Western Surety Company, each on behalf of KZJV LLC in favor of VGPL (together, the "**VGPL Payment Bonds**"); (d) any other agreements setting forth the parties' respective rights and obligations with

respect to the VGPL Performance Bonds and VGPL Payment Bonds (such agreements, together with the VGPL Performance Bonds and the VGPL Payment Bonds, the "**VGPL Surety Bond Obligations**"); and (e) that certain Second Amended and Restated Engineering, Procurement and Construction Agreement, entered into as of January 7, 2022, and that certain Engineering, Procurement and Construction Agreement, entered into as of January 10, 2023 (as amended together, the "**PLNG EPC Contracts**") with KZJV LLC, and any other agreements setting forth the parties' respective rights and obligations under the PLNG EPC Contracts (collectively, the "**PLNG EPC Contracts Obligations**"), shall all continue in full force and effect in accordance with the terms thereof and applicable non-bankruptcy law and are not discharged, enjoined, impaired, released or otherwise modified in any way. For the avoidance of doubt, nothing in the Plan or this Order, including, without limitation, any exculpation, release, injunction, exclusions, and discharge provisions of the Plan contained in **Article VIII** of the Plan or otherwise, shall bar, alter, limit, impair, release, modify, enlarge, or enjoin any VGPL Guaranty Obligations, any VGPL Surety Bond Obligations, PLNG EPC Contracts Obligations and/or any rights, claims, actions or defenses, or other matters to which VGPL is entitled under such VGPL Guaranty Obligations, VGPL Surety Bond Obligations, or PLNG EPC Contracts Obligations at law, in equity, or otherwise. The VGPL Guaranties, the VGPL Payment Bonds, the VGPL Performance Bonds, the PLNG EPC Contracts, and all VGPL Guaranty Obligations, VGPL Surety Bond Obligations, PLNG EPC Contracts Obligations, and any rights, claims, actions or defenses, or other matters to which the Reorganized Debtors or VGPL are entitled under such agreements or obligations, at law, in equity, or otherwise, shall be reinstated and/or retained by the Reorganized Debtors and VGPL, as applicable, in the ordinary course of business as if the Chapter 11 Cases had not been commenced. Nothing in the Plan or this paragraph shall affect in any way VGPL's rights against

any non-Debtor under the VGPL Guaranties, VGPL Payment Bonds, VGPL Performance Bonds, PLNG EPC Contracts, or otherwise with regard to the VGPL Guaranty Obligations, VGPL Surety Bond Obligations, and PLNG EPC Contracts Obligations. Subject to **Article VIII** of the Plan, nothing in this paragraph shall affect in any way any non-Debtor's rights against VGPL under the VGPL Guaranties, VGPL Payment Bonds, VGPL Performance Bonds, PLNG EPC Contracts, or otherwise with regard to the VGPL Guaranty Obligations, VGPL Surety Bond Obligations, and PLNG EPC Contracts Obligations.

161. **OPPD Reservation of Rights.** Notwithstanding anything to the contrary in the Plan Documents: (i) nothing contained in the Plan Documents shall operate to release, discharge, impair, or enjoin any rights, obligations, Claims, Causes of Action, defenses, or remedies of Omaha Public Power District ("**OPPD**"), the Debtors, or the Reorganized Debtors, as applicable, against the Debtors, Reorganized Debtors, OPPD, or any Person, as applicable, accruing before, on, or after the Effective Date as it relates to that certain *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated September 21, 2021, as amended by those certain *Amendment No. 1 and Amendment No. 2 to Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated August 13, 2024 (together with all amendments, exhibits, schedules, and ancillary agreements and documents thereto, the "**OPPD Contract**"), or the adversary proceeding, pending before the Court at Adversary Number 25-03025; (ii) all parties' rights, remedies, and obligations under the OPPD Contract are explicitly preserved, and all terms of the OPPD Contract remain fully enforceable after the Effective Date notwithstanding the Plan Injunction; and (iii) OPPD is hereby deemed, as of the Effective Date, to have affirmatively opted out of the Third-Party Release

provisions of the Plan and is not bound by the Third-Party Release or any other provision contained in the Plan Documents purporting to release, discharge, impair, or enjoin OPPD's rights, Claims, Causes of Action, or remedies against any non-Debtor, including Travelers Casualty and Surety Company and Pacific Indemnity Company, who issued performance and payment bond no. 107261753/82455022 (the "**OPPD Surety Bonds**"). All of OPPD's rights (whatever such rights may or may not be) are hereby explicitly preserved against the OPPD Surety Bonds.

162. **Provisions Regarding Element Fleet**. Notwithstanding anything to the contrary set forth in the Plan or this Order, (i) on the Effective Date, the Reorganized Debtors shall be deemed to have assumed (a) the Master Lease Agreement dated July 1, 2008, executed by Zachry Industrial, Inc. (together with any and all amendments); (b) the Master Services Agreement dated July 1, 2008, executed by Zachry Industrial, Inc. (together with any and all amendments, and addenda); (c) the Vehicle Fleet Open-End Lease Agreement dated April 18, 2022, executed by Zachry Maintenance Services, LLC (together with any and all amendments, and addenda); (d) the Master Services Agreement dated April 18, 2022, executed by Zachry Maintenance Services, LLC (together with any and all amendments, and addenda); (e) the Continuing Guaranty of Payment dated June 23, 2008, executed by ZHI; and (f) the Continuing Guaranty of Payment dated March 28, 2022, executed by ZHI (collectively, (a)-(f), the "**Element Contracts**" and items (e) and (f), collectively, the "**Guaranty Agreements**"); (ii) no Cure Claim in Cash shall be paid to Element Fleet Corporation ("**Element**") by the Reorganized Debtors on the Effective Date; (iii) to the extent either or both of the Guaranty Agreements are not executory contracts capable of being assumed under section 365 of the Bankruptcy Code they shall not be subject to the discharge (**Article VIII**), re-vesting of assets (**Article IV.E**) or cancellation of instruments (**Article IV.I**) provisions of the Plan and shall remain enforceable in accordance with their terms and applicable non-bankruptcy

law following the Effective Date; (iv) following the Effective Date, any payments under the Element Contracts shall be made in the ordinary course of business pursuant to the terms of the Element Contracts and without regard to the discharge provisions of **Article V.A** of the Plan; (iv) following the Effective Date, the Reorganized Debtors and Element may exercise any rights of set off and/or recoupment under the Element Contracts in accordance with the terms of the Element Contracts, and Element shall not be obligated to file a motion by the Confirmation Date under **Article VI.J** of the Plan; (v) the retention of jurisdiction provision in **Article XI.3** of the Plan shall not apply to the Element Contracts after the Effective Date; and (vi) as an administrative matter, Element is hereby deemed, as of the Effective Date and without any further action, notice, or order by any party or this Court, to have withdrawn Claim Nos. 1238, 1239, and 1240.

163. **Provisions Regarding Reynolds**. Notwithstanding anything to the contrary in the Plan Documents: (i) D. Reynolds Company, d/b/a The Reynolds Company ("**Reynolds**") is hereby deemed, as of the Effective Date, to have affirmatively opted out of the Third-Party Release provisions of the Plan and is not bound by the Third-Party Release; (ii) confirmation of the Plan shall not release, discharge, impair, or enjoin Reynolds' rights, Claims, or remedies against any non-Debtor, including BMZ Third Coast Partners ("**BMZ**"), Burns & McDonald Engineering Company, Inc., and the Sureties (Travelers Casualty and Surety Company of America and Pacific Indemnity Company), subject to the terms of this paragraph; (iii) as set forth in **Article II.A** of the Plan, any Administrative Claims of Reynolds that accrued in the ordinary course of business after the Petition Date may be paid by the Debtors or Reorganized Debtors, as applicable, in the ordinary course of business, to the extent not otherwise paid as Cure Claims on the Effective Date; and (iv) confirmation of the Plan shall not release, discharge, impair, or enjoin Reynolds' rights, claims, or remedies against any Person accruing on or after the Effective Date. On the Effective Date, as a

Cure Claim, the Debtors shall pay to Reynolds the sum of $9,459,022.55 which payment shall be deemed to fully satisfy: (a) Proof of Claim No. 64 filed by Reynolds, and (b) any Claim which Reynolds may have or assert against the Sureties, whether based on the Claim reflected in Proof of Claim No. 64, any other Claim against the Debtors, or otherwise, and Reynolds shall not assert against the Sureties any such Claims that are actually satisfied pursuant to this paragraph. Proof of Claim No. 65 relating to BMZ shall be deemed as withdrawn based upon the terms of this provision. Reynolds's objections to confirmation of the Plan [Docket Nos. 1859, 2239, 2322] are resolved by this paragraph.

164. **Provisions Regarding Encina.** Notwithstanding anything to the contrary in the Plan Documents, including **Article VII.E** of the Plan, Claim No. 1753 filed by Encina Development Group, LLC ("**Encina**") shall be deemed timely filed if the Court grants Encina's *Emergency Motion to Permit Filing Proof of Claim After Bar Date* [Docket No. 2120] (the "**Encina Motion**"). The hearing on the Encina Motion shall be adjourned to no earlier than April 1, 2025 at 3:00 p.m. (prevailing Central Time), or such other date and time agreed by the Debtors and Encina or ordered by the Court. *Encina Development Group LLC's Objection to Confirmation of the Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2315] shall be deemed withdrawn.

165. **Provisions Regarding Consolidated Pipe and Supply.** For the avoidance of doubt, any rights of Consolidated Pipe and Supply Company, Inc. d/b/a High Country Fusion with respect to the Claim Nos. 1453, 1478, 1649, whether against the Debtors, Golden Pass, or other third-party, if any, are reserved pending satisfaction of such claims consistent with the terms of the Plan.

166. **Provisions Regarding the Sureties**. 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 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. The Reorganized Debtors have and are hereby deemed to assume *cum onere* the Existing Surety Bonds and Prepetition Indemnity Agreements, and any and all obligations thereunder, without regard to and without the necessity of any determination as to whether the Existing Surety Bonds or the Surety Indemnity Agreements are executory contracts or whether such agreements are financial accommodations, as those terms are defined or used in the Bankruptcy Code, and the Sureties are hereby deemed to have consented to the Debtors' assumption of the Existing Surety Bonds and Prepetition Indemnity Agreements. All obligations of the Debtors and the Sureties under the Existing Surety Bonds and Prepetition Indemnity Agreements shall be satisfied by the Debtors and the Sureties, as applicable, in the normal course of business in accordance with the terms of the applicable agreements. The Reorganized Debtors shall execute new indemnity agreements in favor of, and in a form acceptable to, in their sole discretion, each of the Sureties (the "**Post-Confirmation Indemnity Agreements**") in forms substantially the same as the Prepetition Indemnity Agreements; *provided, however*, that (1) the execution of the Post-Confirmation Indemnity Agreements shall be deemed cumulative relief and

any failure to execute the same shall not impact the liability of the Reorganized Debtors under the Existing Surety Bonds or the Prepetition Indemnity Agreements, and (2) nothing shall obligate the Sureties to issue new surety bonds or renew any Existing Surety Bonds or bar, enjoin, or stay the Sureties from demanding collateral or exercising any other of the Sureties' rights, claims, and defenses, in each case subject in all respects to the terms and conditions of the Existing Surety Bonds, Prepetition Indemnity Agreements, and Post-Confirmation Indemnity Agreements, as applicable. 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. Notwithstanding any other provision of the Plan Documents, the Sureties shall not be enjoined from enforcing any rights under the Existing Surety Bonds and the Prepetition Indemnity Agreements. As an administrative matter and in consideration of the Reorganized Debtors' assumption of the obligations as set forth in this paragraph, the Sureties are hereby deemed, as of the Effective Date, to have withdrawn all proofs of claim filed in the Chapter 11 Cases, including, for the avoidance of doubt, Claim Nos. 1210, 1216, 1217, 1218, 1219, 1220, 1222, 1223, 1224, 1247, 1367, 1371, 1374, 1376, 1378, 1385, 1388, 1389, 1394, 1398, 1402, 1403, 1405, 1406, 1408, 1412, 1414, 1416, 1417, 1418, and 1155, without any further action, notice, or order by any party or this Court. For the avoidance of doubt, the Debtors and the Sureties reserve all rights, defenses, and claims under the Existing Surety Bonds and Prepetition Indemnity Agreements, which are preserved notwithstanding anything to the contrary in the Plan Documents.

167. **Provisions Regarding Zurich and Chubb**. Notwithstanding anything to the contrary in the Plan Documents, any agreement or order related to post-petition or exit financing, any bar date notice or claim objection, any notice of any cure amount or claim, any document related to any of the foregoing, or any other order of the Court (including, without limitation, any

other provision that purports to be preemptory or supervening, confers Court jurisdiction, grants an injunction, discharge or release, or requires a party to opt out of any releases):

a. nothing alters, modifies or otherwise amends the terms and conditions of either of (i) the Zurich Insurance Program (including any agreement to arbitrate disputes and any provisions regarding the provision, maintenance, use, nature, and priority of the Zurich Collateral), or (ii) any insurance policies issued by ACE American Insurance Company, Federal Insurance Company or any of their U.S.-based affiliates and predecessors (collectively, and together with ESIS, Inc., solely in their capacities as insurers and third party administrators "**Chubb**"), to, or which provide coverage to, any of the Debtors (or any of their predecessors) at any time and for any line of coverage (collectively and together with any agreements, documents or instruments related thereto and each as amended, modified or supplemented and including any exhibit or addenda thereto, the "**Chubb Insurance Program**") (including any agreement to arbitrate disputes and any provisions regarding the provision, maintenance, use, nature, and priority of any letters of credit, loss funds, trusts, cash collateral, credits, return premium, unearned premium and any and all other collateral and/or security (including any proceeds of any of the foregoing) provided now or at any time prior or after hereto, by or on behalf of the Debtors to Chubb, the "**Chubb Collateral**") except that as of the Effective Date, the Reorganized Debtors jointly and severally shall assume the Zurich Insurance Program and the Chubb Insurance Program in their entireties pursuant to sections 105 and 365 of the Bankruptcy Code;

b. nothing therein releases or discharges (i) Zurich's security interests and liens on the Zurich Collateral or (ii) Chubb's security interests and liens on the Chubb Collateral;

c. nothing therein releases or discharges the Zurich Claims or the claims of Chubb (including, without limitation any Cure Claim, claim for reimbursement of any deductible or self-insured retention that Chubb pays on behalf of the Debtors or Reorganized Debtors, as applicable, arising under the Chubb Insurance Program (regardless of whether all or any part of such claims arise or become liquidated before or after the Petition Date, effectiveness of the Plan or conversion of one or more of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the "**Chubb Claims**")), and further, the Zurich Claims and the Chubb Claims are actual and necessary expenses of the Debtors' estates (or the Reorganized Debtors, as applicable) and shall be paid in full in the ordinary course of business, whether as an Allowed Administrative Claim under section 503(b)(1)(A) of the Bankruptcy Code or otherwise, regardless of when such amounts are or shall become liquidated, due or paid, without the need or requirement for either Zurich or Chubb to file or serve a request, motion, or application for payment of or proof of any Proof of Claim, Cure Claim (or any objection to

cure amounts/notices), or Administrative Claim (and further and for the avoidance of doubt, any claim bar date shall not be applicable to either Zurich or Chubb);

d. the Debtors or the Reorganized Debtors, as applicable, shall not sell, assign, or otherwise transfer the Zurich Insurance Program or any portion thereof, or the Chubb Insurance Program or any portion thereof and/or any of the rights, benefits, interests, and proceeds under the Zurich Insurance Program or the Chubb Insurance Program except with the express written permission of Zurich or Chubb, respectively;

e. the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in **Article VIII** of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Court, solely to permit: (i) claimants with valid workers' compensation claims or direct action claims against Zurich and/or Chubb under applicable non-bankruptcy law to proceed with their claims; (ii) Zurich and Chubb to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Court, (a) all workers' compensation or direct action claims covered by the Zurich Insurance Program or the Chubb Insurance Program, (b) all claims where an order has been entered by the Court granting a claimant relief from the automatic stay or the injunctions set forth in **Article VIII** of the Plan to proceed with its claim, and (c) all costs in relation to each of the foregoing; (iii) Zurich or Chubb to draw against any or all of the Zurich Collateral or Chubb Collateral, as applicable, and to hold the proceeds thereof as security for the obligations of the Debtors (or the Reorganized Debtors, as applicable) to Zurich or Chubb, as applicable, and/or apply such proceeds to the obligations of the Debtors (or the Reorganized Debtors, as applicable) under the Zurich Insurance Program or Chubb Insurance Program, in such order as Zurich or Chubb, as applicable, may determine; and (iv) subject to the terms of the Zurich Insurance Program, the Chubb Insurance Program and/or applicable non-bankruptcy law, Zurich and Chubb to (a) cancel any policies under the Zurich Insurance Program or the Chubb Insurance Program, respectively, and (b) take other actions relating to the Zurich Insurance Program or the Chubb Insurance Program, respectively (including setoff);

f. neither **Article VIII.F** of the Plan nor any corresponding paragraph of this Order shall apply to any claims covered by and/or asserted under the Zurich Insurance Program or Chubb Insurance Program; and

g. without altering any of the foregoing, provided that there is no liquidated amount due to Zurich or Chubb as of the Effective Date, no Cure Claim in Cash shall be paid to Zurich or Chubb by the Reorganized Debtors.

Terms used in this paragraph but not defined in the Plan shall have the meaning attributed to them in that certain *Order (I) Authorizing the Debtors to Enter into the New Insurance Program, (II) Authorizing Assumption of the Existing Insurance Program, and (III) Granting Related Relief* entered by the Court on October 29, 2024 [Docket No. 1262] (the "**Zurich Order**"), except that the term Zurich Insurance Program used in this paragraph shall have the meaning given to the term "Insurance Program" in the Zurich Order.

168. **Provisions Regarding Personal Injury Claims.** Notwithstanding anything to the contrary in Plan Documents, the Plan Documents shall not impair any right of the Adams Plaintiffs,[4] Andres Plaintiffs,[5] or Martinez Plaintiffs[6] to litigate any timely filed, personal injury General Unsecured Claim to final judgment or settlement against the Debtors in name only, and, if successful, to recover on such Claim from any third-party that provides insurance coverage or indemnification to the Debtors, subject to applicable non-bankruptcy law and any applicable agreements governing such insurance coverage or indemnification between such third-parties and the Debtors; *provided*, *however*, the foregoing shall not apply to any Claim released pursuant to the Third-Party Release set forth in the Plan to the extent any Holder of a Claim elects not to opt-out of the Third-Party Release. To the extent any such insurance coverage or indemnification is insufficient to provide the treatment to an Allowed Claim required by **Article III** of the Plan, the

[4] The "**Adams Plaintiffs**" means any plaintiffs in the litigation styled as *Adams, et al. v. Zachry Industrial, Inc.*, Case No. 5:23-cv-01437-XR in the United States District Court for the Western District of Texas.

[5] The "**Andres Plaintiffs**" means any plaintiffs in the litigation styled as *Ursula Andres v. Zachry Industrial, Inc., et al.*, Case No. E-0210871 in the 172nd Judicial District Court of Jefferson County, Texas.

[6] The "**Martinez Plaintiffs**" means any plaintiffs in the litigation styled as *Yelina Martinez, Individually, and as the Estate Representative of Jaime Martinez, Deceased, et al, v. Zachry Industrial, Inc., et al.*, Case No. 23DCCV0129 in the 172nd Judicial District Court of Jefferson County, Texas.

Holder of such Allowed Claim shall have an Allowed General Unsecured Claim against the applicable Debtor's estate for the deficiency.

169. **Provisions Regarding CB&I and Chiyoda.** Notwithstanding anything to the contrary in the Plan Documents:

a. Pursuant to section 365 of the Bankruptcy Code, the applicable Reorganized Debtors shall assume: (a) that certain Joint Venture Agreement for the Freeport Liquefaction Project dated December 10, 2013, by and among ZII and CB&I LLC ("**CB&I**") (the agreement, as amended, the "**CZJV-FLNG Agreement**"), which formed a joint venture thereunder (the "**CZJV-FLNG**"); (b) that certain Joint Venture Agreement dated March 24, 2015, by and among ZII, CB&I, and Chiyoda International Corporation ("**CIC**," and together with ZII and CB&I, the "**FLNG JV Parties**") (such agreement, as amended, the "**CCZJV-FLNG Agreement**"), which formed a joint venture thereunder (the "**CCZJV-FLNG**," and together with the CZJV-FLNG, the "**FLNG JVs**"); and (c) any parent guarantees related to the CZJV-FLNG Agreement or the CCZJV-FLNG Agreement (collectively, (a) through (c), the "**FLNG JV Agreements**"). The Debtors are deemed to have cured all monetary defaults (if any) existing under the FLNG JV Agreements on account of any Cure Claim without the need for any cash payment, either into escrow or directly to CB&I, CIC, or the FLNG JVs on the Effective Date.

b. Upon assumption of the FLNG JV Agreements, the FLNG JV Parties shall continue to abide and be bound by all terms of the FLNG JV Agreements as if the Debtors had not filed any bankruptcy, without regard to whether any payment obligations arising under the FLNG JV Agreements accrued prepetition or postpetition, including, without limitation, any indemnities, cost-sharing or risk-sharing provisions, or parent company guaranties provided for under the FLNG JV Agreements, including with respect to any liabilities adjudicated or settled, whether in the past, present, or future, in accordance with the applicable FLNG JV Agreements, in connection with the following actions and any appeals thereof: (a) *FLNG Liquefaction, LLC, et al. v. CB&I Inc., et al.*, Adv. Pro. No. 24-03195 (MI) (the "**FLNG Motor Defect Claim**"); (b) *FLNG Liquefaction, LLC, et al. v. Zachry Industrial, Inc., et al.*, Adv. Pro. No. 24-03189 (MI) (the "**FLNG Subrogation Claim**"); and (c) *Allianz Global Risks US Insurance Co., et al. v. Zachry Industrial, Inc., et al.*, Adv. Pro. No. 24-03190 (MI) (the "**Allianz Subrogation Claim**," and together with the FLNG Motor Defect Claim and the FLNG Subrogation Claim, the "**FLNG Litigation Claims**").

c. By assuming the FLNG JV Agreements, the Debtors retain all rights under the FLNG JV Agreements, including with respect to the FLNG JVs'

property, and specifically, the FLNG JVs' insurance policies and the proceeds thereof, to the same extent as such rights existed prepetition.

d. Notwithstanding anything to the contrary in this Order, the Plan, the Disclosure Statement, or any other order of this Court in these chapter 11 cases, upon assumption of the FLNG JV Agreements, the Claims that CB&I (on behalf of itself and as successor to CB&I Inc.) [Claim Nos. 1524 and 1527] and CIC [Claim Nos. 1555 and 1559] have asserted against the Debtors shall be deemed withdrawn in their entirety, as if CB&I and CIC had not filed such Claims, and shall be discharged without any distributions under the Plan.

e. Notwithstanding anything to the contrary in this Order, the Plan, the Disclosure Statement, or any other order of this Court in these chapter 11 cases, the FLNG JV Parties acknowledge and agree that the applicable governing law, jurisdiction, and venue provisions set forth in the FLNG JV Agreements shall govern post-Effective Date and that any post-Effective Date disputes under applicable non-bankruptcy law among CB&I, CIC, the FLNG JVs, and the Debtors or the Reorganized Debtors, as applicable, shall not be subject to the jurisdiction of the Court, regardless of when such disputes first arose or accrued. For the avoidance of doubt, this paragraph shall not affect this Court's jurisdiction with respect to any pre-Effective Date disputes, including with respect to the FLNG Litigation Claims, the Plan, the Order, and the GPX Settlement.

f. For the avoidance of doubt, upon entry of the GPX Final Settlement Order, the Debtors exited the MZJV-GPX and rejected all of their interests therein.

g. None of CIC, CB&I, the CCZJV-GPX, the MZJV-GPX, the CZJV-FLNG, or the CCZJV-FLNG are Releasing Parties or Released Parties, and all such parties are deemed to opt out of the Third-Party Release.

h. Nothing in this paragraph 169 modifies the terms of the GPX Settlement, including the releases by the GPX Settlement Parties under the GPX Settlement, or the terms of the GPX Settlement Dispute Opinion or GPX Settlement Dispute Order. Notwithstanding anything to the contrary in this Order, the Plan, the Disclosure Statement, or any other order of this Court in these chapter 11 cases, to the extent there is any inconsistency between this Order and the GPX Settlement Documents, or between the Plan and the GPX Settlement Documents, with respect to the terms of the GPX Settlement, the GPX Settlement Documents shall control.

170. **Effect of Conflict.** This Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Order. In the event of an inconsistency

between this Order and the Plan, the Disclosure Statement, or the Plan Supplement, this Order shall control.

171. **Requests to Waive Stay of Order.** The rights of the Debtors and Reorganized Debtors, as applicable, are fully reserved and preserved to request, including on an emergency basis, that the Court waive any stay of this Confirmation Order under any Bankruptcy Rule for good cause shown.

172. **Waiver or Estoppel.** Upon the Effective Date, each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Court prior to the Confirmation Date.

173. **Final Order.** This Order is a Final Order, and the period in which an appeal must be filed shall commence upon the entry hereof.

174. **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and relating to, the Chapter 11 Cases, this Order, and the Plan, including the matters set forth in **Article XII** of the Plan and sections 105(a) and 1142 of the Bankruptcy Code.

Signed: February 27, 2025

Marvin Isgur
United States Bankruptcy Judge

Exhibit A

Plan

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

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

FURTHER MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES

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Counsel to the Debtors and Debtors in Possession

Dated: February 23, 2025
Houston, Texas

[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.

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INTRODUCTION

Zachry Holdings, Inc. and the other above-captioned debtors and debtors in possession (collectively, the "**Debtors**") propose this Plan for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in **Article I.A** of this Plan. Although proposed jointly for administrative purposes, this Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Holders of Claims against or Interests in the Debtors may refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of this Plan, the Restructuring Transactions, and certain related matters. The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THIS PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "A&R Credit Facility" means the Prepetition Credit Facility as amended and restated in accordance with the terms of this Plan and the A&R Credit Facility Documents.

2. "A&R Credit Facility Agent" means the Prepetition Credit Facility Agent, in its capacity as administrative agent under the A&R Credit Facility.

3. "A&R Credit Facility Documents" means any documents governing the A&R Credit Facility, including the A&R Credit Facility Term Sheet, the Exit Intercreditor Agreement, and any amendments, modifications, and supplements thereto, and together with any related commitments, notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith.

4. "A&R Credit Facility Lenders" means, collectively, the lenders under the A&R Credit Facility.

5. "A&R Credit Facility Term Sheet" means the term sheet describing the material terms of the A&R Credit Facility, attached as Schedule 1 to Exhibit A of the *Notice of Filing of the Third Plan Supplement* [Docket No. 2316].

6. "Administrative Claim" means a Claim for costs and expenses of administration of the Estates under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the Chapter 11 Cases; (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; and (d) Adequate Protection Superpriority Claims (as defined in the Cash Collateral Order).

7. "Affiliate" means, with respect to any Entity, all Entities that would fall within the definition assigned to such term in section 101(2) of the Bankruptcy Code if such Entity was a debtor in a case under the Bankruptcy Code.

8. "Allowed" means, with respect to any Claim or Interest, a Claim or an Interest expressly allowed under the Plan, under the Bankruptcy Code, or by a Final Order, as applicable.

9. "Assumption List" means the list of Executory Contracts and Unexpired Leases that shall be assumed by the Debtors pursuant to the Plan attached as Exhibit B to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150] and as may be amended from time to time.

10. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

11. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas.

12. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

13. "Bar Date" means the applicable deadline set by the Bankruptcy Court pursuant to this Plan, the Bar Date Order, or other Final Order by which Proofs of Claim must be filed with respect to a Claim.

14. "Bar Date Order" means the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 636].

15. "Business Day" means any day, other than a Saturday, Sunday, or "legal holiday" (as such term is defined in Bankruptcy Rule 9006(a)).

16. "Cash" means cash and cash equivalents, including bank deposits, checks, and other similar items in legal tender of the United States of America.

17. "Cash Collateral" has the meaning set forth in section 363(a) of the Bankruptcy Code.

18. "Cash Collateral Order" means either a further interim or final cash collateral order, based upon the *Seventh Interim Order (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 2135].

19. "Cause of Action" means, without limitation, any Claim, Interest, claim, damage, remedy, cause of action, controversy, demand, right, right of setoff, action, cross claim, counterclaim, recoupment, claim for breach of duty imposed by law or in equity, action, Lien, indemnity, contribution, reimbursement, guaranty, debt, suit, class action, third-party claim, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, direct or indirect, choate or inchoate, liquidated or unliquidated, suspected or unsuspected, disputed or undisputed, secured or unsecured, assertable or existing directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, statutory or otherwise, under the Bankruptcy Code or applicable non-bankruptcy law, or pursuant to any other theory of law. For the avoidance of doubt, Causes of Action include: (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, or 553 of the Bankruptcy Code or similar non-U.S. or state law; and (d) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

20. "CB&I" means CB&I LLC, a wholly owned subsidiary of McDermott International, Inc.

21. "CCZJV-GPX" means the hybrid joint venture between ZII, CB&I, and Chiyoda with respect to the GPX Project.

22. "Chapter 11 Cases" means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all the Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

23. "Chiyoda" means Chiyoda International Corporation.

24. "Claim" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

25. "Claims and Noticing Agent" means Verita Global, LLC, formerly known as Kurtzman Carson Consultants, LLC, as claims, noticing, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

26. "Claims Objection Deadline" means ninety (90) calendar days after the Effective Date, subject to extension as set forth in **Article VII.A** hereof.

27. "Claims Register" means the official register of Claims against and Interests in the Debtors maintained by the Claims and Noticing Agent.

28. "Class" means a class of Claims or Interests as set forth in **Article III** hereof pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

29. "CM/ECF" means the Bankruptcy Court's Case Management and Electronic Case Filing system.

30. "Committee" means the Statutory Unsecured Claimholders' Committee, appointed by the U.S. Trustee pursuant to section 1102 of the Bankruptcy Code on June 4, 2024 [Docket No. 176] and reconstituted by the U.S. Trustee on January 27, 2025 [Docket No. 2003].

31. "Confirmation" means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases.

32. "Confirmation Date" means the date upon which the Bankruptcy Court confirms this Plan pursuant to section 1129 of the Bankruptcy Code.

33. "Confirmation Hearing" means the hearing held by the Bankruptcy Court on the confirmation of this Plan, pursuant to Bankruptcy Rule 3020(b)(2) and sections 1128 and 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

34. "Confirmation Order" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, which shall be in form and substance reasonably satisfactory to the Debtors and the Committee and consistent in all material respects with the terms and conditions of the Plan.

35. "Consummation" means the occurrence of the Effective Date.

36. "Convenience Claim" means any Claim that would otherwise be a General Unsecured Claim that is (a) Allowed in the Convenience Claim Amount or less, or (b) irrevocably reduced to the Convenience Claim Amount at the election of the Holder of an Allowed General Unsecured Claim as evidenced on the ballot timely and validly submitted by such Holder, pursuant to the solicitation procedures approved under the Disclosure Statement Order; *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.

37. "Convenience Claim Amount" means $25,000.00.

38. "Cure Claim" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor's defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365

of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

39. "Debtor Release" means the release set forth in **Article VIII.C** of this Plan.

40. "Debtors" has the meaning set forth in the introduction hereof.

41. "Deferred Compensation Plan" means the supplemental non-qualified deferred compensation plan providing tax deferred income for certain employees of the Debtors.

42. "Deferred Compensation Plan Claims" means any Claim against any Debtor derived from, based upon, or arising under the Deferred Compensation Plan.

43. "Disallowed" means, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtors which: (i) has been disallowed, in whole or in part, by a Final Order; (ii) has been withdrawn by agreement of the Holder thereof and the Debtors or Reorganized Debtors in whole or in part; (iii) has been withdrawn, in whole or in part, by the Holder thereof; (iv) if listed in the Schedules as zero or as Disputed, contingent, or unliquidated and in respect of which a Proof of Claim or a proof of Interest, as applicable, has not been timely filed or deemed timely filed pursuant to this Plan, the Bankruptcy Code, any Final Order, or other applicable law; (v) has been reclassified, expunged, subordinated, or estimated to the extent that such reclassification, expungement, subordination, or estimation results in a reduction in the filed amount of any Proof of Claim or proof of Interest; (vi) is evidenced by a Proof of Claim or a proof of Interest which has been filed, or which has been deemed to be filed under applicable law or order of the Bankruptcy Court, or which is required to be filed by order of the Bankruptcy Court, but as to which such Proof of Claim or proof of Interest was not timely or properly filed; (vii) is unenforceable to the extent provided in sections 502(b) or 502(e) of the Bankruptcy Code, including because such Claim asserts a right of reimbursement or contribution that is contingent as of the Effective Date; or (viii) subject to the Debtor Release, where the holder of a Claim is a Person or Entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, unless such Person, Entity or transferee has paid the amount, or turned over any such property, for which such Person, Entity, or transferee is liable under sections 522(i), 542, 543, 550, or 553 of the Bankruptcy Code. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination, or estimation.

44. "Disclosure Statement" means the disclosure statement in respect of this Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

45. "Disclosure Statement Order" means one or more orders entered by the Bankruptcy Court: (i) finding that the Disclosure Statement (including any amendment, supplement, or modification thereto) contains adequate information pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, and (ii) authorizing the use of the Disclosure Statement for soliciting votes on the Plan.

46. "Disputed" means, as to a Claim or an Interest, a Claim or an Interest that is (a) neither Allowed nor Disallowed under this Plan or a Final Order, nor deemed Allowed under sections 502, 503, or 1111 of the Bankruptcy Code; (b) subject to an objection or a request for estimation Filed by the Claims Objection Deadline by any party in interest, and such objection or request for estimation has not been withdrawn or determined by a Final Order; or (c) is contingent or unliquidated and not otherwise Allowed by a Final Order.

47. "Distribution Agent" means the Reorganized Debtors or the Entity or Entities selected by the Debtors or the Reorganized Debtors, as applicable, to make or facilitate distributions pursuant to this Plan for all Claims other than General Unsecured Claims.

48. "Distribution Record Date" means the record date for purposes of making distributions under this Plan on account of Allowed Claims, which shall be the Effective Date.

49. "Effective Date" means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions precedent to the occurrence of the Effective Date set forth in **Article IX.A** of this Plan have been satisfied or waived in accordance with **Article IX.B** of this Plan. Any action to be taken on the Effective Date may be taken on the Effective Date or as soon as reasonably practicable thereafter.

50. "Employee Obligations" means any existing obligations to employees, independent contractors, and retirees of the Debtors to be assumed, Reinstated, or honored, as applicable, in accordance with **Article IV.L** of this Plan, including the Deferred Compensation Plan.

51. "Entity" means any entity, as defined in section 101(15) of the Bankruptcy Code.

52. "Equity Security" means any equity security, as defined in section 101(16) of the Bankruptcy Code, in a Debtor.

53. "Estate" means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

54. "Exculpated Parties" means, collectively, and in each case in its capacity as such, the Debtors, the Committee, and each member of the Committee.

55. "Executory Contract" means a contract to which one or more of the Debtors are a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

56. "Exit Intercreditor Agreement" means that certain junior lien intercreditor agreement (which shall be consistent in all material respects with the terms set forth in the term sheet attached as **Exhibit B** to the Confirmation Order), by and among the A&R Credit Facility Agent, as agent under the A&R Credit Facility, Sunbelt, as lender under the Sunbelt Promissory Note and the GUC Note Collateral Agent, as collateral agent under the GUC Note, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

57. "Federal Judgment Rate" means the federal judgment rate in effect as of the Petition Date.

58. "File" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases. "Filed" and "Filing" shall have correlative meanings.

59. "Final Order" means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, that has not been reversed, stayed, modified, or amended and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing has been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided, however*, for the avoidance of any doubt, an order or judgment that is subject to appeal shall not constitute a Final Order even if a stay of such order or judgment pending resolution of the appeal has not been obtained; *provided, further*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order will not preclude such order from being a Final Order.

60. "General Unsecured Claim" means any Unsecured Claim against the Debtors that is not: (a) an Administrative Claim; (b) a Professional Fee Claim; (c) a Priority Tax Claim; (d) a Restructuring Expense; (e) an Other Priority Claim; (f) a Deferred Compensation Plan Claim; (g) a Convenience Claim; or (h) an Intercompany Claim. For the avoidance of doubt, General Unsecured Claims include (x) Claims resulting from the rejection of Executory Contracts and Unexpired Leases, and (y) Claims resulting from litigation against one or more of the Debtors, arising prior to the Petition Date.

61. "Golden Pass" means Golden Pass LNG Terminal LLC, f/k/a Golden Pass Products LLC.

62. "Governing Body" means, in each case in its capacity as such, the board of directors, board of managers, manager, managing member, general partner, investment committee, special committee, or such similar governing body of any of the Debtors or the Reorganized Debtors, as applicable.

63. "Governmental Unit" means any governmental unit, as defined in section 101(27) of the Bankruptcy Code.

64. "GPX Administrative Claims" means GPX Claims for amounts due in connection with the GPX Project incurred by ZII between May 21, 2024 and July 25, 2024 that constitute Administrative Claims.

65. "GPX Claims" means Claims for ZII's obligations to vendors and subcontractors (including ZII's share of Pool A and Pool B obligations of CCZJV-GPX and MZJV-GPX, respectively, but excluding obligations to ZII and its affiliates) for amounts validly due for goods and/or services in respect of the GPX Project.

66. "GPX Direct Payment Cap" means the Direct Payment Cap (as defined in the GPX Settlement Documents).

67. "GPX Excess Claims Stipulation" means the joint stipulation of facts and agreed determination between the Debtors and Golden Pass determining the amount of Excess Claims (as defined in the GPX Settlement Term Sheet, attached as Exhibit A to the GPX Interim Settlement Order) under the GPX Settlement, attached as Exhibit G to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150].

68. "GPX Final Settlement Order" means the *Final Order (I) Approving the Settlement By and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV (II) Authorizing the Parties to Perform Any and All Obligations Contemplated By the Settlement, and (III) Granting Related Relief* [Docket No. 744].

69. "GPX Interim Settlement Order" means the *Interim Order (I) Approving the Settlement By and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV (II) Authorizing the Parties to Perform Any and All Obligations Contemplated By the Settlement, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket Nos. 610 (Sealed); 625 (Redacted)].

70. "GPX L/C" means the *Irrevocable Standby Letter of Credit*, No. 3139428, dated February 25, 2019, as amended, issued by the GPX L/C Issuer.

71. "GPX L/C Issuer" means the Prepetition Credit Facility Agent.

72. "GPX L/C Permitted Draws" means Golden Pass's right, pursuant to the terms of the GPX Settlement, to make the GPX L/C Scheduled Draws; *provided*, *however*, that pursuant to **Article IV.B** hereof and the GPX Excess Claims Stipulation, the Debtors may wire Cash to Golden Pass in the amount of each Scheduled Draw on or before the date each Scheduled Draw is due under the GPX Settlement, in lieu of Golden Pass making each Scheduled Draw against the GPX L/C.

73. "GPX L/C Scheduled Draws" means Golden Pass's right to draw on the GPX L/C in specified amounts on specified dates in accordance with the GPX Settlement; *provided*, *however*, that pursuant to **Article IV.B** hereof and the GPX Excess Claims Stipulation, the Debtors may wire Cash to Golden Pass in the amount of each Scheduled Draw on the date each Scheduled Draw is due under the GPX Settlement, in lieu of Golden Pass making each Scheduled Draw against the GPX L/C.

74. "GPX Parent Guarantee" means that certain guarantee executed by ZHI in favor of Golden Pass (as amended, supplemented, or otherwise modified), related to the GPX Project.

75. "GPX Project" means the Golden Pass liquefied natural gas project under construction in Sabine Pass, Texas.

76. "GPX Settlement" means the settlement among the GPX Settlement Parties resolving disputes related to the GPX Project, as set forth in the GPX Settlement Documents, and approved on a final basis under the GPX Final Settlement Order.

77. "GPX Settlement Dispute Opinion" means the *Memorandum Opinion* [Docket No. 1266], dated October 29, 2024.

78. "GPX Settlement Dispute Order" means the *Order* [Docket No. 1267], dated October 29, 2024.

79. "GPX Settlement Documents" means, collectively, the GPX Final Settlement Order, the GPX Interim Settlement Order, the GPX Settlement Term Sheet (attached as Exhibit A to the GPX Interim Settlement Order), the Confidential Settlement Agreement and Release in Connection with the Settlement Term Sheet [Docket No. 739], the GPX Excess Claims Stipulation, and all ancillary documents contemplated by and related to the foregoing documents.

80. "GPX Settlement Parties" means the Debtors, Golden Pass, CCZJV-GPX, CB&I, and Chiyoda.

81. "GUC Note Administrative Agent" means, solely in its capacity as such, an Entity selected by the Committee, reasonably acceptable to the Debtors, to serve as the administrative agent of the GUC Promissory Notes, and any successor thereto, on behalf of the Holders of Allowed General Unsecured Claims in accordance with the GUC Note Documents. The identity of the initial GUC Note Administrative Agent shall be disclosed at or prior to the Confirmation Hearing.

82. "GUC Note Collateral Agent" means, solely in its capacity as such, an Entity selected by the Committee and reasonably acceptable to the Debtors, to serve as the collateral agent of the GUC Promissory Notes, and any successor thereto, on behalf of the Holders of Allowed General Unsecured Claims in accordance with the GUC Note Documents. The identity of the initial GUC Note Collateral Agent shall be disclosed at or prior to the Confirmation Hearing.

83. "GUC Note Purchase Agreement" means that certain note purchase agreement to be entered into, on or before the Effective Date, by the Debtors and the GUC Note Administrative Agent on behalf of Holders of Allowed General Unsecured Claims, pursuant to which ZHI shall issue the GUC Promissory Notes on the terms set forth in the GUC Note Term Sheet.

84. "GUC Note Documents" means any documents governing the GUC Promissory Notes, including the GUC Note Term Sheet, GUC Note Purchase Agreement, the Exit Intercreditor Agreement, and any amendments, modifications, and supplements thereto, and together with any related commitments, notes, certificates, agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection therewith.

85. "GUC Note Term Sheet" means the term sheet describing the material terms of the GUC Promissory Notes, attached as Exhibit F to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150], and shall be acceptable to the Committee.

86. "GUC Promissory Notes" means the secured promissory notes to be issued pursuant to the GUC Note Purchase Agreement and this Plan in a face amount equal to the aggregate Allowed amount of General Unsecured Claims (inclusive of postpetition interest accrued at the Federal Judgment Rate) and on the terms set forth in the GUC Note Term Sheet.

87. "Holder" means a Person or an Entity holding a Claim against, or an Interest in, any Debtor, as applicable, including any Person or Entity that is the record or beneficial owner, nominee, investment advisor, sub-advisor, or manager of discretionary accounts that hold any Claim against or Interest in any Debtor.

88. "Impaired" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

89. "Indemnification Obligation" means any existing indemnification obligations to be assumed, Reinstated, or honored, as applicable, in accordance with **Article IV.K** of this Plan.

90. "Intercompany Claim" means any Claim against a Debtor held by another Debtor or a non-Debtor Affiliate.

91. "Intercompany Interest" means any Interest in a Debtor held by another Debtor.

92. "Interest" means, collectively, (a) any Equity Security in any Debtor and (b) any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor that existed immediately before the Effective Date.

93. "Judicial Code" means title 28 of the United States Code, 28 U.S.C. §§ 1-4001.

94. "Lien" means any lien, as defined in section 101(37) of the Bankruptcy Code.

95. "MZJV-GPX" means the joint venture between ZII and CB&I with respect to the GPX Project.

96. "Order" means any judgment, order, award, injunction, writ, permit, license, or decree of any Governmental Body or arbitrator of applicable jurisdiction.

97. "Organizational Documents" means the organizational and governance documents for the Debtors, as may be amended to give effect to the Restructuring Transactions as contemplated by the Plan, including, without limitation, any applicable certificates of incorporation, certificates of formation, or certificates of limited partnership (or equivalent organizational documents), bylaws, and limited liability company agreements.

98. "Other Priority Claim" means any Claim, other than an Administrative Claim or Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

99. "Other Secured Claim" means any Secured Claim against the Debtors other than the Prepetition Credit Facility Claims.

100. "Parent Capital Contribution" means a capital contribution to be made on or prior to the Effective Date to ZHI by the immediate parent company of ZHI, totaling $53 million and comprised of (x) $30 million in Cash and (y) the cancellation of intercompany liabilities owed by the Debtors in an amount equal to $23 million.

101. "Person" has the meaning set forth in section 101(41) of the Bankruptcy Code.

102. "Petition Date" means the date on which the Debtors commenced the Chapter 11 Cases, May 21, 2024.

103. "Plan" means this joint plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, supplemented, or otherwise modified from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments hereto, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with **Article IX.A** hereof, including the Plan Supplement (as altered, amended, supplemented, or otherwise modified from time to time), which is incorporated by reference herein and made part of the Plan as if set forth herein; *provided, however*, that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan impacting the treatment of Holders of General Unsecured Claims under the Plan.

104. "Plan Supplement" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to this Plan (in each case, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and the Bankruptcy Rules), the initial drafts of certain of such documents to be Filed by the Debtors no later than seven (7) calendar days before the deadline to object to confirmation of this Plan to the extent available, or such later date as may be approved by the Bankruptcy Court, including the following, as applicable: (a) the Organizational Documents (solely to the extent that the Debtors determine, in their sole discretion, that any amendments to such Organizational Documents are necessary to effectuate the Restructuring Transactions on the Effective Date); (b) the Assumption List; (c) the Rejection List; (d) the Schedule of Retained Causes of Action; (e) the A&R Credit Facility Term Sheet; (f) the GUC Note Term Sheet; and (g) the GPX Excess Claims Stipulation; *provided, however*, that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan Supplement impacting the treatment of Holders of General Unsecured Claims under the Plan.

105. "Prepetition Credit Agreement" means the *Third Amendment to Second Amended and Restated Credit Agreement*, dated as of May 2, 2023 (as amended, amended and restated, supplemented, or otherwise modified from time to time), among the Prepetition Loan Parties, the Prepetition Lenders, the Prepetition Credit Facility Agent, and each other party thereto.

106. "Prepetition Credit Facility" means the senior secured credit facility, including the Prepetition Revolving Facility, Prepetition L/C Facility, and Prepetition Term Loan Facility, governed by the Prepetition Credit Agreement.

107. "Prepetition Credit Facility Agent" means Bank of America, N.A., in its capacity as the administrative agent under the Prepetition Credit Agreement.

108. "Prepetition Credit Facility Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition Credit Facility, including the Prepetition Revolver Claims, Prepetition L/C Claims, and Prepetition Term Loan Claims.

107. "Prepetition Intercreditor Agreement" means that certain intercreditor agreement executed on January 25, 2013 by and between the Prepetition Credit Facility Agent and the Sureties.

109. "Prepetition L/C Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition L/C Facility.

110. "Prepetition L/C Facility" means the senior secured letter of credit facility provided under the Prepetition Revolving Facility.

111. "Prepetition Lenders" means, collectively, the lenders under the Prepetition Credit Facility.

112. "Prepetition Loan Parties" means ZHI, Zachry EPC Holdings, LLC, and Zachry Plan Services Holdings, Inc., as borrowers, and the guarantors party to that certain *Third Amended and Restated Continuing Guaranty*, dated as of May 2, 2023.

113. "Prepetition Revolver Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition Revolving Facility.

114. "Prepetition Revolving Facility" means the senior secured revolving credit facility, including a swing line facility and the Prepetition L/C Facility, provided under the Prepetition Credit Facility.

115. "Prepetition Secured Parties" means, collectively, the Prepetition Credit Facility Agent and the Prepetition Lenders.

116. "Prepetition Term Loan Claims" means any Claim against any Debtor derived from, based upon, or arising under the Prepetition Term Loan Facility.

117. "Prepetition Term Loan Facility" means the senior secured term loan facility provided under the Prepetition Credit Facility.

118. "Priority Tax Claim" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

119. "Professional" means any Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

120. "Professional Fee Claim" means any Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

121. "Proof of Claim" means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

122. "Reinstatement" means, with respect to a Claim or Interest, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code. "Reinstated" and "Reinstate" shall have correlative meanings.

123. "Rejection List" means the list of Executory Contracts and Unexpired Leases that shall be rejected by the Debtors pursuant to the Plan attached as Exhibit C to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150] and as may be amended from time to time.

124. "Related Party" means with respect to an Entity, collectively, (a) such Entity's current and former Affiliates and (b) such Entity's current and former Affiliates' respective directors, managers, officers, shareholders, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, managers, fiduciaries, trustees, employees, agents (including any disbursing agent), advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, other representatives, and other professionals, representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), and the respective heirs, executors, estates, and nominees of the foregoing.

125. "Released Avoidance Actions" means any and all avoidance, recovery, subordination, or other Claims and Causes of Action that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 510, 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code, or other similar or related state, federal, or foreign statutes, common law, or other applicable law.

126. "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.

127. "Released Prepetition Lenders" means, collectively, the Prepetition Lenders that do not elect to opt-out of, or that do not object to, the Third-Party Release.

128. "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 this Plan, current employees of the Debtors as of the Voting Record Date shall not be Releasing Parties under this Plan.

129. "Reorganized Debtor" means a Debtor, or any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Effective Date, unless otherwise dissolved pursuant to this Plan.

130. "Restructuring Expenses" means the actual, reasonable, and documented fees and expenses of the Prepetition Lenders, subject to the terms of the Prepetition Credit Facility or any applicable fee reimbursement letter between any Entity and the Debtors, as the case may be.

131. "Restructuring Transactions" means the transactions described in **Article IV.C** of this Plan.

132. "Schedule of Retained Causes of Action" means the schedule of certain Causes of Action of the Debtors (attached as Exhibit D to the *Notice of Filing of the Second Plan Supplement* [Docket No. 2150]) that, notwithstanding anything to the contrary in the Plan, are not released, waived, or transferred pursuant to this Plan, as the same may be amended, modified, or supplemented from time to time.

133. "Schedules" means, collectively, the schedules of assets and liabilities and statements of financial affairs Filed by the Debtors on July 16, 2024 [Docket Nos. 511-52] pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as amended on August 30, 2024 [Docket Nos. 855-64], on December 2, 2024 [Docket No. 1564], and on December 20, 2024 [Docket Nos. 1770-75], and as the same may be further amended, modified, or supplemented from time to time.

134. "Secured Claim" means a Claim: (a) secured by a valid, perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

135. "Securities Act" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa, or any similar federal, state, or local Law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

136. "SIR" means any self-insured retention under the Debtors' insurance policies.

137. "Sunbelt" means Sunbelt Rentals, Inc. or its duly authorized agent on behalf of itself and its affiliates.

138. "Sunbelt Promissory Note" means that certain secured promissory note to be issued by Zachry Holdings, Inc. to Sunbelt on the terms set forth in the Sunbelt Term Sheet.

139. "Sunbelt Term Sheet" means Exhibit A attached to the *Stipulation and Agreed Order Regarding Sunbelt Claims* [Docket No. 2284].

140. "Sureties" means Travelers Casualty & Surety Company of America and Pacific Indemnity Company.

141. "Third-Party Release" means the release set forth in **Article VIII.D** of this Plan.

142. "Unexpired Lease" means a lease to which one or more of the Debtors are a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

143. "Unimpaired" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

144. "Unsecured Claim" means any Claim that is not a Secured Claim.

145. "U.S. Trustee" means the Office of the United States Trustee.

146. "Voting Record Date" means the record date for determining whether any Holder of an Impaired Claim is entitled to vote to accept or reject the Plan, as established pursuant to the Disclosure Statement Order.

148. "Workers' Compensation Program" means the Debtors' (a) written contracts, agreements, and agreements of indemnity, in each case relating to workers' compensation, (b) self-insured workers' compensation bonds, policies, programs, and plans for workers' compensation, and (c) workers' compensation insurance issued to or entered into at any time by any of the Debtors.

149. "Zachry Interests" means the Interests in ZHI.

150. "ZHI" means Zachry Holdings, Inc.

151. "ZII" means Zachry Industrial, Inc.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented in accordance with this Plan or the Confirmation Order, as applicable; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and

assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits contained in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (8) unless otherwise specified, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (12) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (13) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (14) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of this Plan, all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (15) unless otherwise specified, any action to be taken on the Effective Date may be taken on the Effective Date or as soon as reasonably practicable thereafter.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If any payment, distribution, act, or deadline under this Plan is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date.

D. Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of this Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with this Plan, and the Confirmation Order (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided*, *however*, corporate or limited liability company governance matters relating to the Debtors or the Reorganized Debtors, shall be governed by the laws of the state of incorporation or formation (as applicable) of the applicable Debtor or the Reorganized Debtor.

E. Reference to Monetary Figures.

All references in this Plan to monetary figures shall refer to the legal tender of the United States of America, unless otherwise expressly provided herein.

F. Controlling Document.

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, the terms of the relevant provision in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of any inconsistency between the Plan and the GPX Settlement Documents with respect to the terms of the GPX Settlement, the GPX Settlement Documents shall control. In the event of an inconsistency between the Confirmation Order and this Plan, the Confirmation Order shall control.

ARTICLE II.
ADMINISTRATIVE AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Restructuring Expenses have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in **Article III** hereof.

A. Administrative Claims.

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, or otherwise provided for under the Plan, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims, Claims for fees and expenses pursuant to section 1930 of chapter 123 of the Judicial Code, and Restructuring Expenses) shall be paid in full an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in full and final satisfaction, compromise, settlement, release, and discharge of such Administrative Claim in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date, or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed on or prior to the Effective Date, the first Business Day after the date that is thirty (30) days after the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable; or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court. Nothing in the foregoing or otherwise in this Plan shall prejudice the Debtors' or the Reorganized Debtors' rights and defenses regarding any asserted Administrative Claim.

For the avoidance of doubt, and notwithstanding anything to the contrary in the Plan, any Allowed Administrative Claims that are GPX Administrative Claims to the extent not satisfied prior to the Effective Date, if any, shall be paid by Golden Pass in accordance with the terms of the GPX Settlement Documents and this Plan.

B. Professional Fee Claims.

1. Final Fee Applications and Payment of Professional Fee Claims.

All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. The Reorganized Debtors shall pay Professional Fee Claims in Cash as soon as practicable after such Professional Fee Claims are Allowed.

2. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in this Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of this Plan and Consummation incurred by the Debtors (including for the avoidance of doubt the Committee's Professional fees and expenses). Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

C. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash equal to the full amount of its Claim or such other treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

D. Restructuring Expenses.

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date (or, with respect to necessary post-Effective Date matters, after the Effective Date), shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein, without any requirement to File a fee application with the Bankruptcy Court, without the need for itemized time detail, or without any requirement for Bankruptcy Court review or approval. All Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Effective Date; *provided*, *however*, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Effective Date, invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. After the Effective Date, the Debtors and Reorganized Debtors (as applicable) shall continue to pay when due and payable in the ordinary course of their business any unpaid Restructuring Expenses that were incurred on, before, or after the Effective Date.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests.

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in **Article II** of this Plan (or as otherwise set forth herein), all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims, Professional Fee Claims, Priority Tax Claims, or Restructuring Expenses, as described in **Article II**.

A Claim or an Interest, or any portion thereof, is classified in a particular Class only to the extent that any portion of such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under this Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims against and Interests in the Debtors pursuant to this Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
2	Other Priority Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
3	Prepetition Credit Facility Claims	Impaired	Entitled to Vote
4	Deferred Compensation Plan Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
5	Convenience Claims	Unimpaired	Presumed to Accept; Not Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote

Class	Claim or Interest	Status	Voting Rights
7	Intercompany Claims	Impaired/Unimpaired	Presumed to Accept / Presumed to Reject; Not Entitled to Vote
8	Intercompany Interests	Impaired/Unimpaired	Presumed to Accept / Presumed to Reject; Not Entitled to Vote
9	Zachry Interests	Unimpaired	Presumed to Accept; Not Entitled to Vote

B. Formation of Debtor Groups for Convenience Only.

This Plan is a separate plan of reorganization for each Debtor. This Plan groups the Debtors together solely for the purpose of describing treatment under the Plan, Confirmation of this Plan, and making distributions in respect of Claims against and Interests in the Debtors under this Plan. Such groupings shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under this Plan, all Debtors shall continue to exist as separate legal entities. The Plan is not premised on, and does not provide for, the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan, or otherwise.

C. Treatment of Claims and Interests.

Each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under this Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent less favorable treatment is agreed to by the Reorganized Debtors and the Holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

1. Class 1 – Other Secured Claims.

a. Classification: Class 1 consists of all Other Secured Claims.

b. Treatment: In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each Holder of such Allowed Other Secured Claim shall receive, at the option of the applicable Debtor or Reorganized Debtor, either:

i. payment in full in Cash of its Allowed Other Secured Claim;

ii. the collateral securing its Allowed Other Secured Claim;

iii. Reinstatement of its Allowed Other Secured Claim; or

iv. such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

For the avoidance of doubt, and notwithstanding anything to the contrary in this Plan, the treatment provided to any Allowed Other Secured Claim that is a GPX Claim that has not been satisfied prior to the Effective Date, if any, shall be provided by Golden Pass in accordance with the terms of the GPX Settlement Documents and this Plan.

c. Voting: Allowed Other Secured Claims in Class 1 are Unimpaired. Each Holder of an Allowed Other Secured Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

2. Class 2 – Other Priority Claims.

   a. Classification: Class 2 consists of all Other Priority Claims.

   b. Treatment: In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive Cash in an amount equal to such Allowed Other Priority Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

   c. Voting: Allowed Other Priority Claims in Class 2 are Unimpaired. Each Holder of an Allowed Other Priority Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

3. Class 3 – Prepetition Credit Facility Claims.

   a. Classification: Class 3 consists of all Prepetition Credit Facility Claims.

   b. Allowance: On the Effective Date, all Prepetition Credit Facility Claims shall be deemed Allowed, and not subject to any counterclaim, defense, offset, or reduction of any kind, in an aggregate amount not less than $281,250,000, *plus* any obligations, unpaid fees, unpaid premiums, and accrued and unpaid interest as of the Petition Date due and owing to Holders of Prepetition Credit Facility Claims under the Prepetition Credit Facility.

   c. Treatment: In exchange for full and final satisfaction, settlement, release, and discharge of (including any Liens related thereto) each Allowed Prepetition Credit Facility Claim, each Holder of an Allowed Prepetition Credit Facility Claim shall, on the Effective Date, become party to, and bound by, the A&R Credit Facility on account of such Holder's Allowed Prepetition Credit Facility Claim, on the terms set forth in the A&R Credit Facility Documents.

   d. Voting: Allowed Prepetition Credit Facility Claims in Class 3 are Impaired. Each Holder of an Allowed Prepetition Credit Facility Claim shall be entitled to vote to accept or reject this Plan.

4. Class 4 – Deferred Compensation Plan Claims.

   a. Classification: Class 4 consists of all Deferred Compensation Plan Claims.

   b. Treatment: Except to the extent that a Holder of an Allowed Deferred Compensation Plan Claim agrees to less favorable treatment, each Allowed Deferred Compensation Plan Claim shall be Reinstated pursuant to section 1124 of the Bankruptcy Code, and each such Holder's rights under the Deferred Compensation Plan shall be honored by the Reorganized Debtors in accordance with the terms of the Deferred Compensation Plan.

   c. Voting: Allowed Deferred Compensation Plan Claims in Class 4 are Unimpaired. Each Holder of an Allowed Deferred Compensation Plan Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

5. Class 5 – Convenience Claims.

   a. Classification: Class 5 consists of all Convenience Claims.

   b. Treatment: Except to the extent that a Holder of an Allowed Convenience Claim agrees to less favorable treatment, each Holder of an Allowed Convenience Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Convenience Claim, on

the Effective Date or as soon as practicable thereafter, Cash in an amount equal to such Holder's Allowed Convenience Claim (excluding any interest that may be owed on such Claim), but in no event shall distributions on account of any Allowed Convenience Claim exceed the Convenience Claim Amount.

c. Voting: Allowed Convenience Claims in Class 5 are Unimpaired. Each Holder of an Allowed Convenience Claim shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims.

a. Classification: Class 6 consists of all General Unsecured Claims.

b. Treatment: 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, a GUC Promissory Note in the principal amount of its Allowed General Unsecured Claim, inclusive of postpetition interest accrued at the Federal Judgment Rate from the Petition Date through the Effective Date; *provided*, *however*, notwithstanding anything to the contrary in this 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 Documents and this Plan.

c. Voting: Allowed General Unsecured Claims in Class 6 are Impaired. Each Holder of an Allowed General Unsecured Claim shall be entitled to vote to accept or reject this Plan.

7. Class 7 – Intercompany Claims.

a. Classification: Class 7 consists of all Intercompany Claims.

b. Treatment: On the Effective Date, or as soon as reasonably practicable thereafter, Allowed Intercompany Claims shall be, at the option of the applicable Debtor, Reinstated, converted to equity, or otherwise set off, settled, distributed, contributed, canceled, or released to the extent reasonably determined to be appropriate by the Debtors or Reorganized Debtors, as applicable.

c. Voting: Allowed Intercompany Claims in Class 7 are either (i) Unimpaired and are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code, or (ii) Impaired and are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders of Intercompany Claims are not entitled to vote to accept or reject this Plan.

8. Class 8 – Intercompany Interests.

a. Classification: Class 8 consists of all Intercompany Interests.

b. Treatment: On the Effective Date, Intercompany Interests shall, at the option of the applicable Debtor, be:

i. Reinstated; or

ii. set off, settled, addressed, distributed, contributed, merged, cancelled, or released.

c. Voting: Allowed Intercompany Interests in Class 8 are either (i) Unimpaired and are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy

Code, or (ii) Impaired and are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders of Intercompany Interests are not entitled to vote to accept or reject this Plan.

9. Class 9 – Zachry Interests.

a. Classification: Class 9 consists of all Zachry Interests.

b. Treatment: Zachry Interests shall be Reinstated on the Effective Date, and the legal, equitable, and contractual rights to which Holders of Zachry Interests are entitled shall remain unaltered.

c. Voting: Allowed Zachry Interests in Class 9 are Unimpaired. Holders of Zachry Interests shall be conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject this Plan.

D. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in this Plan, nothing under this Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claims, including, all rights regarding legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

E. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. Acceptance by Impaired Classes.

An Impaired Class of Claims shall have accepted this Plan, if not counting the vote of any Holder designated under section 1126(e) of the Bankruptcy Code, (i) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in the Class have voted to accept this Plan, and (ii) the Holders of more than one-half in number of the Allowed Claims actually voting in the Class have voted to accept this Plan.

G. Voting Classes, Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims eligible to vote and no Holders of Claims eligible to vote in such Class vote to accept or reject this Plan, the Holders of such Claims in such Class shall be deemed to have accepted this Plan.

H. Intercompany Interests.

To the extent Reinstated under this Plan, distributions on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience, for the ultimate benefit of the Holders of Zachry Interests, and in exchange for the Debtors' and Reorganized Debtors' agreement under this Plan to make certain distributions to the Holders of Allowed Claims.

I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by one or more of the Classes entitled to vote pursuant to **Article III.C** of this Plan. The Debtors shall seek Confirmation of this Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify this Plan in accordance with **Article X** of this Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification,

including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

J. No Substantive Consolidation.

Although this Plan is presented as a joint plan of reorganization for administrative purposes, this Plan does not provide for the substantive consolidation of the Debtors' Estates, and on the Effective Date, the Debtors' Estates shall not be deemed to be substantively consolidated for any reason. Except as expressly provided herein, nothing in this Plan, the Confirmation Order, or the Disclosure Statement shall constitute or be deemed to constitute a representation that any one or all of the Debtors is subject to or liable for any Claims against or Interests in any other Debtor. A Claim against or Interest in multiple Debtors will be treated as a separate Claim against or Interest in each applicable Debtor's Estate for all purposes, including voting and distribution; *provided, however*, that no Claim will receive value in excess of one hundred percent (100.0%) of the Allowed amount of such Claim (inclusive of postpetition interest, if applicable and if owed under this Plan) under the Plan for all such Debtors.

K. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired or is properly classified under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

L. Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Any such contractual, legal, or equitable subordination rights shall be settled, compromised, and released pursuant to this Plan.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. General Settlement of Claims and Interests.

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to this Plan, including all General Unsecured Claims and GPX Claims, and any challenge to the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Credit Facility Claims, whether under any provision of chapter 5 of the Bankruptcy Code, based on any equitable theory, or otherwise. This Plan shall be deemed a motion to approve the good faith compromise and settlement of all Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to **Article VI** hereof, all distributions made to Holders of Allowed Claims in any Class are intended to be and shall be final.

B. GPX Settlement.

The terms of the GPX Settlement, as approved by the GPX Final Settlement Order, are incorporated into, and are an integral part of, this Plan. Nothing herein modifies the terms of the GPX Settlement or the rights, obligations, and interests of the GPX Settlement Parties under the GPX Settlement Documents. For the avoidance of doubt, the GPX Settlement Parties, as applicable, shall comply with the terms of the GPX Final Settlement Order through and following the Effective Date. Notwithstanding anything to the contrary herein, including **Article VIII**

hereof, the terms of the GPX Settlement and the GPX Final Settlement Order remain binding on the GPX Settlement Parties and, as applicable, the A&R Credit Facility Agent and A&R Credit Facility Lenders. In the event of any inconsistency between the Plan and the GPX Settlement Documents with respect to the terms of the GPX Settlement, the GPX Settlement Documents shall control.

For the avoidance of doubt, Golden Pass is a Released Party as set forth in this Plan and shall be entitled to the protections of this Plan's release and injunction provisions, including the Third-Party Release, to the fullest extent provided herein and under applicable law. Further, and for the avoidance of doubt, Golden Pass and any property interest of Golden Pass shall be entitled to the protections of this Plan's release and injunction provisions with respect to all Claims that constitute GPX Claims that are satisfied, discharged, and/or released in connection with the GPX Settlement and this Plan, and no Holder of a satisfied GPX Claim shall have any recourse against any Entity, including Golden Pass and its property, on account of such satisfied GPX Claim regardless of whether such Holder is a Releasing Party under this Plan.

In addition, notwithstanding anything to the contrary in this Plan, neither this Plan nor any Restructuring Transaction contemplated herein shall impair Golden Pass's right to make the GPX L/C Permitted Draws, pursuant to the terms of the GPX Settlement and GPX Excess Claims Stipulation. However, pursuant to the GPX Excess Claims Stipulation, the Debtors may wire Cash to Golden Pass in the amount of each Scheduled Draw on or before the date each Scheduled Draw is due under the GPX Settlement, in lieu of Golden Pass making each Scheduled Draw against the GPX L/C. If the Debtors fail to make such Cash payments when due, Golden Pass may make the corresponding Scheduled Draw(s) against the GPX L/C, as contemplated under the GPX Settlement. Upon Golden Pass's receipt of the final GPX L/C Permitted Draw (or the corresponding Cash amounts from the Debtors pursuant to this section), the remaining GPX L/C shall be deemed cancelled, null, and void, without any further notice to or action, order, or approval of the Bankruptcy Court, consistent with the GPX Settlement; Golden Pass shall not be permitted to request any other or additional draws thereunder; and Golden Pass shall be deemed to release, waive, and discharge any and all rights it has or may have in respect of the GPX L/C, the GPX L/C Issuer, and the GPX Parent Guarantee. Until Golden Pass receives the final GPX L/C Permitted Draw (or the corresponding Cash amounts from the Debtors), the Debtors, GPX L/C Issuer, and A&R Credit Facility Lenders, as applicable, shall renew the GPX L/C as necessary, and shall not take any action that would impair, affect, or prejudice Golden Pass's rights to the GPX L/C Permitted Draws. The A&R Credit Facility Agent and A&R Credit Facility Lenders have consented to the GPX L/C Permitted Draws in accordance with the GPX Settlement; the Debtors and/or Reorganized Debtors, the A&R Credit Facility Agent, and the A&R Credit Facility Lenders further have waived, released, and extinguished any claims, defenses, or disputes with respect to the GPX L/C Permitted Draws, and stipulate and agree that all conditions and prerequisites for the GPX L/C Permitted Draws in accordance with the GPX L/C have been met, *provided that*, for each GPX L/C Permitted Draw actually drawn by Golden Pass against the GPX L/C, Golden Pass shall notify the A&R Credit Facility Agent of the GPX L/C Permitted Draw in the manner set forth in Annex A to the GPX L/C, as amended by the parties pursuant to the GPX Settlement.

C. Restructuring Transactions.

Before, on, and after the Effective Date, the Debtors, the Reorganized Debtors, the GUC Note Administrative Agent, or the GUC Note Collateral Agent, as applicable, shall consummate the Restructuring Transactions and may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan that are consistent with and pursuant to the terms and conditions of this Plan, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of this Plan, the Plan Supplement, and the Confirmation Order; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan, the Plan Supplement, and the Confirmation Order, and having other terms to which the applicable Entities may agree; (3) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) the execution and/or delivery of the A&R Credit Facility Documents and effectiveness of the A&R Credit Facility; (5) the execution and delivery of the GUC Note Documents; (6) the issuance of the GUC Promissory Notes on account of Allowed General Unsecured Claims; (7) the issuance of the Sunbelt Promissory Note; (8) the execution of the Exit Intercreditor Agreement; (9) the Parent Capital Contribution; (10) such other transactions that are required to effectuate the Restructuring Transactions; and (11) all

other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall and shall be deemed to, pursuant to sections 363, 1123, and 1142 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan.

D. The Reorganized Debtors.

Except as otherwise provided herein or as may be provided in the Plan Supplement or the Confirmation Order, each of the Reorganized Debtors shall continue its existence as a separate Entity after the Effective Date, with all the powers thereof, pursuant to the applicable law in the jurisdiction in which each Reorganized Debtor is incorporated and pursuant to the Organizational Documents. On the Effective Date, all Zachry Interests shall be Reinstated and the Reorganized Debtors shall be deemed to adopt and re-affirm the Organizational Documents without any further action, notice, or approval. The Reorganized Debtors shall be authorized to adopt any agreements, documents, and instruments, and to take any other action contemplated under this Plan as necessary to consummate this Plan.

E. Vesting of Assets in the Reorganized Debtors.

Except as otherwise provided in this Plan or any agreement, instrument, or other document incorporated herein, on the Effective Date, all property in each Estate, including all Causes of Action and any property acquired by any of the Debtors pursuant to this Plan, shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, Causes of Action, or other encumbrances. On and after the Effective Date, except as otherwise provided in this Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

F. Sunbelt Promissory Note.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the Sunbelt Promissory Note shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Sunbelt Promissory Note and the Exit Intercreditor Agreement; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Sunbelt Promissory Note; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors, Sunbelt and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

G. GUC Promissory Notes.

On or prior to the Effective Date, the Debtors and the GUC Note Administrative Agent shall execute the GUC Note Documents and the Debtors shall take all steps necessary to issue the GUC Promissory Notes in accordance with the Plan and the GUC Note Documents. If any General Unsecured Claims are Allowed after the Effective Date, within ten (10) Business Days of such Allowance, the Reorganized Debtors shall issue additional GUC Promissory Notes in the amount of such Allowed Claims to ensure that each Holder of an Allowed General Unsecured Claim receives the treatment specified in **Article III.C.6** of this Plan. If any General Unsecured Claims Allowed as of the Effective Date are, after the Effective Date, Allowed in a different amount, Disallowed, reclassified, withdrawn, or otherwise altered, the GUC Note Administrative Agent shall update the debt register maintained pursuant to the GUC

Note Documents to account for any such changes to any such General Unsecured Claim, and any GUC Promissory Notes issued on account of a General Unsecured Claim that is subsequently Disallowed, reclassified, or withdrawn shall be deemed cancelled. As set forth in **Article VII.A** of the Plan, the Reorganized Debtors shall retain sole authority to reconcile and object to Claims after the Effective Date.

Confirmation of the Plan and execution of the GUC Note Documents by the GUC Note Administrative Agent and/or GUC Note Collateral Agent shall be deemed to bind all Holders of Allowed General Unsecured Claims receiving the GUC Promissory Notes under the Plan as if each such party had executed the GUC Note Documents with appropriate authorization.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the GUC Note Documents shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the GUC Promissory Notes; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the GUC Note Documents and the Exit Intercreditor Agreement; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors, the GUC Note Administrative Agent, the GUC Note Collateral Agent, and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

H. Sources of Consideration for Plan Distributions.

Each distribution and issuance referred to in **Article VI** of this Plan shall be governed by the terms and conditions set forth in this Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The Debtors and the Reorganized Debtors, as applicable, shall fund distributions under this Plan with (a) Cash on hand; (b) proceeds from the A&R Credit Facility; (c) the issuance of the Sunbelt Promissory Note; (d) the issuance of the GUC Promissory Notes; and (e) proceeds from the Parent Capital Contribution.

1. Use of Cash.

The Debtors, Reorganized Debtors, and Distribution Agent, as applicable, shall use Cash on hand for working capital purposes and to fund distributions to certain Holders of Allowed Claims, consistent with the terms of this Plan. The Debtors and Reorganized Debtors will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Debtors or Reorganized Debtors to satisfy their obligations under the Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and will not violate the terms of the Plan.

2. A&R Credit Facility.

On the Effective Date, the Reorganized Debtors shall enter into the A&R Credit Facility, the terms of which will be set forth in the A&R Credit Facility Documents. Confirmation of this Plan shall be deemed final approval of the A&R Credit Facility, the A&R Credit Facility Documents, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and authorization for the Reorganized Debtors to enter into and execute the A&R Credit Facility Documents and such other documents as may be required to effectuate the financings and treatment provided by this Plan.

Confirmation of this Plan, and the occurrence of the Effective Date, shall bind each A&R Credit Facility Lender to the A&R Credit Facility Documents as if each such party had executed the A&R Credit Facility Documents with appropriate authorization.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the A&R Credit Facility Documents shall: (a) be deemed to be granted; (b) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the A&R Credit Facility Documents; (c) be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the A&R Credit Facility Documents; and (d) not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

3. Sunbelt Promissory Note.

On the Effective Date, the Reorganized Debtors shall issue the Sunbelt Promissory Note on the terms set forth in the Sunbelt Term Sheet. The issuance of the Sunbelt Promissory Note under the Plan is duly authorized without the need for any further action, authorization, or consent by the Debtors, the Reorganized Debtors, or any other Entity. The Sunbelt Promissory Note issued pursuant to the Plan shall be duly authorized, validly issued, and non-assessable.

4. GUC Promissory Notes.

On the Effective Date, and from time to time thereafter in accordance with **Article IV.G** of this Plan, the Reorganized Debtors shall issue the GUC Promissory Notes as set forth in the GUC Note Documents and the GUC Promissory Notes shall vest in the GUC Note Administrative Agent for distribution to Holders of Allowed General Unsecured Claims. The issuance of the GUC Promissory Notes under the Plan is duly authorized without the need for any further action, authorization, or consent by the Debtors, the Reorganized Debtors, the GUC Note Administrative Agent, or any other Entity. Confirmation of this Plan shall be deemed final approval of each of the GUC Promissory Notes, the GUC Note Purchase Agreement, the GUC Note Documents, all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein and authorization for the Reorganized Debtors to enter into and execute the GUC Note Documents, and such other documents as may be required to effectuate the GUC Promissory Notes. The GUC Promissory Notes issued pursuant to the Plan shall be duly authorized, validly issued, and non-assessable.

5. Parent Capital Contribution.

On or prior to the Effective Date, the Parent Capital Contribution shall be contributed to ZHI. The Debtors, Reorganized Debtors, and the Distribution Agent, as applicable, shall use the Cash proceeds from the Parent Capital Contribution for working capital purposes and to fund distributions to certain Holders of Allowed Claims, consistent with the terms of this Plan.

I. Cancellation of Existing Agreements and Interests.

On the Effective Date, except with respect to the A&R Credit Facility, the Sunbelt Promissory Note, the GUC Promissory Notes, the Parent Capital Contribution, the Zachry Interests, the Prepetition Intercreditor Agreement, the GPX Settlement Documents, the GPX L/C (subject to **Article IV.B** hereof), the GPX Parent Guarantee (subject to **Article IV.B** hereof), all Employee Obligations (including the Deferred Compensation Plan) assumed pursuant to **Article IV.K** hereof, all Indemnification Obligations assumed pursuant to **Article IV.L** hereof, and all Executory

Contracts and Unexpired Leases assumed pursuant to **Article V.A** hereof, or to the extent otherwise provided in this Plan or the Confirmation Order, all notes, instruments, certificates, and other documents evidencing Claims or Interests, including credit agreements and indentures, shall be canceled and the obligations of the Debtors and any non-Debtor Affiliate thereunder or in any way related thereto shall be deemed satisfied in full, cancelled, discharged, and of no force or effect. Holders of, or parties to, such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights, distributions, and treatment provided for pursuant to this Plan.

J. Corporate Action.

On the Effective Date, the matters under the Plan involving or requiring corporate action of the Debtors, including, but not limited to, actions requiring a vote of the boards of directors or shareholders and execution of all documentation incident to the Plan, shall be deemed to have been authorized by the Confirmation Order and to have occurred and be in effect from and after the Effective Date without any further action by the officers or directors of the Debtors, any Governing Body, or the Bankruptcy Court.

K. Directors and Officers of the Reorganized Debtors.

On the Effective Date, the directors and officers of each Reorganized Debtor shall consist of the current directors and officers of each respective Debtor.

L. Deferred Compensation Plan and Other Employee Obligations.

All written employment, confidentiality, non-competition agreements, bonus, gainshare and incentive programs, discretionary bonus plans or variable incentive plans regarding payment of a percentage of annual salary based on performance goals and financial targets for certain employees, vacation, holiday pay, severance, retirement, retention, supplemental retirement, executive retirement, pension, deferred compensation (including the Deferred Compensation Plan), indemnification, other similar employee-related agreements or arrangements, retirement income plans, medical, dental, vision, life and disability insurance, flexible spending account, and other health and welfare benefit plans, programs, and arrangements, and collective bargaining agreements that are in effect immediately prior to the Effective Date with the Debtors, shall be assumed by the Debtors and shall remain in place as of the Effective Date, and the Reorganized Debtors will continue to honor such agreements, arrangements, programs, and plans as of the Effective Date, unless otherwise provided herein or in the Confirmation Order, specifically rejected pursuant to a separate order of the Bankruptcy Court, specifically designated as a contract or lease to be rejected on the Rejection List, or specifically identified in a separate rejection motion Filed by the Debtors. For the avoidance of doubt, the Debtors' assumption of all obligations related to the Deferred Compensation Plan shall include any amounts due and owing to participants that have accrued under the Deferred Compensation Plan following the Petition Date.

The Debtors' assumption of such compensation and benefits plans, including the Deferred Compensation Plan, pursuant to the terms of this Plan shall be deemed not to trigger any applicable change of control, immediate vesting, termination, or similar provisions in any applicable plan or program, or an event of "Good Reason" (or a term of like import), in each case as a result of the consummation of the Restructuring Transactions. No counterparty shall have rights under a compensation and benefit plan or program, including the Deferred Compensation Plan, assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

Nothing in this Plan shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action, or other rights with respect to any such contracts, agreements, policies, programs, and plans. For the avoidance of doubt, pursuant to section 1129(a)(13) of the Bankruptcy Code, as of the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable orders of the Bankruptcy Court and applicable law.

M. Indemnification Obligations.

All indemnification provisions in place as of the Effective Date (whether in the bylaws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational

documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for (each in their capacities as such) the current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, financial advisors, restructuring advisors, consultants, other professionals of, or acting on behalf of, the Debtors, and the Sureties, as applicable, shall be reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such current members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, other professionals of, or acting on behalf of, the Debtors, and the Sureties, as provided under the indemnification obligations in place prior to the Effective Date; *provided*, *however*, nothing herein shall expand any of the Debtors' indemnification obligations in place as of the Petition Date.

N. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, but subject to **Article VIII** hereof, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the GPX Final Settlement Order and the releases and exculpations contained in this Plan, including in **Article VIII**.

The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the GPX Final Settlement Order and this Plan, including Article VIII of this Plan**. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation, Consummation, or the occurrence of the Effective Date.

The Reorganized Debtors reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to this Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the corresponding Reorganized Debtor, except as otherwise expressly provided in the GPX Final Settlement Order and this Plan, including **Article VIII** of this Plan. The Reorganized Debtors, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

O. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Reorganized Debtors, and their respective officers and boards of directors and managers, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, notes, releases, and other agreements or documents and take such actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of this Plan in the name of and on behalf of the Reorganized Debtors without the need for any approvals, authorization, or consents except for those expressly required pursuant to this Plan.

P. Certain Securities Law Matters.

No registration statement will be filed under the Securities Act, or pursuant to any state securities laws, with respect to the offer and distribution of any Securities under the Plan. The offering, issuance, and distribution of any Securities pursuant to the Plan, including the Sunbelt Promissory Note and the GUC Promissory Notes to the extent considered to be Securities, will be exempt from the registration requirements of section 5 of the Securities Act or any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code.

Specifically, the offer, sale, issuance, and distribution of the GUC Promissory Notes will be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act and the Notes will be freely transferable and resaleable by non-affiliates of the Debtors and Reorganized Debtors, subject to any contractual limitations or restrictions under U.S. securities laws, if applicable. The Debtors and Reorganized Debtors shall cooperate with each of the holders in determining the status of any holder as an "affiliate" of the Reorganized Debtors.

The Debtors and the Committee will negotiate in good faith to implement a structure that will provide for the transferability of the GUC Promissory Notes through the GUC Note Administrative Agent, including, but not limited to, structures that would assist any Holder of an Allowed General Unsecured Claim receiving a GUC Promissory Note from being deemed an "affiliate" of the Company or any of its subsidiaries, as such term is defined under the Securities Act.

Q. Transferability of GUC Promissory Notes.

Holders of Allowed General Unsecured Claims receiving a GUC Promissory Note may freely assign their GUC Promissory Note, without the consent of the Reorganized Debtors but after providing notice to the GUC Note Administrative Agent, to any (i) existing holder of GUC Promissory Notes, (ii) financial institution (including hedge funds) or (iii) to any Person following and during the continuation of a Breach (as defined in the GUC Note Term Sheet), *provided, however,* that any transfer or assignment of any GUC Promissory Note to any of the Reorganized Debtors' competitors or vendors (or affiliates of such competitors or vendors) shall require the prior written consent of the Reorganized Debtors in their sole discretion. The GUC Note Administrative Agent shall not provide confidential information concerning the Reorganized Debtors or their subsidiaries to any assignee or potential assignee except pursuant to a non-disclosure agreement (in a form reasonably acceptable to the Reorganized Debtors and naming the Reorganized Debtors and their subsidiaries as express third-party beneficiaries), between the GUC Note Administrative Agent and such assignee or potential assignee.

R. Section 1146 Exemption.

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under this Plan or pursuant to: (1) the issuance, reinstatement, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Reorganized Debtors; (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; (5) the grant of collateral as security for any or all of the A&R Credit Facility; (6) the issuance of the GUC Promissory Notes; (7) the issuance of the Sunbelt Promissory Note; or (8) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

S. Dissolution of Certain Debtors.

On or after the Effective Date, certain of the Debtors may be dissolved without further action under applicable law, regulation, Order, or rule, including any action by the stockholders, members, the board of directors, or similar Governing Body of the Debtors or the Reorganized Debtors; *provided*, *however*, subject in all respects to the terms of this Plan, the Reorganized Debtors shall have the power and authority to take any action necessary to wind down and dissolve the foregoing Debtors, and may, to the extent applicable: (1) file a certificate of dissolution for such Debtors, together with all other necessary corporate and company documents, to effect such Debtors' dissolution under the applicable laws of their states of formation; (2) complete and file all final or otherwise required federal, state, and local tax returns and pay taxes required to be paid for such Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any such Debtors or their Estates, as determined under applicable tax laws; and (3) represent the interests of the Debtors or their Estates before any taxing authority in all tax matters, including any action, proceeding, or audit.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

On the Effective Date, all Executory Contracts and Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Debtor in accordance with sections 365 and 1123 of the Bankruptcy Code, other than any Executory Contract or Unexpired Lease that: (1) is identified on the Rejection List; (2) previously expired or terminated pursuant to its own terms; (3) was previously assumed or rejected by the Debtors, including pursuant to the GPX Settlement; (4) is the subject of a motion or notice to reject pending as of the Effective Date; or (5) has an effective date of rejection that is after the Effective Date. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates of the Debtors or Reorganized Debtors.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the assumptions, assumptions and assignments, or rejections of the Executory Contracts or Unexpired Leases as set forth in the Plan, the Assumption List, and the Rejection List, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Except as otherwise specifically set forth herein, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order, and not assigned to a third party on or prior to the Effective Date, shall revest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms may have been modified by this Plan or order of the Bankruptcy Court.

To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease or the execution of any other Restructuring Transaction (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. For the avoidance of doubt, consummation of the Restructuring Transactions shall not be deemed an assignment of any Executory Contract or Unexpired Lease of the Debtors, notwithstanding any change in name, organizational form, or jurisdiction of organization of any Debtor in connection with the occurrence of the Effective Date.

Except as otherwise provided herein or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith, unless otherwise ordered by the Bankruptcy Court.

Notwithstanding anything to the contrary in the Plan, the Debtors or Reorganized Debtors, as applicable, reserve the right to amend or supplement the Assumption List and Rejection List in their discretion prior to the Effective Date (or such later date as may be permitted by this **Article V**); *provided*, *however*, the Debtors shall give prompt notice of any such amendment or supplement to any affected counterparty and such counterparty shall have no less than seven (7) days to object thereto on any grounds.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejections, if any, of any Executory Contracts or Unexpired Leases as provided for in this Plan or the Rejection List, as applicable. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be Filed with the Claims and Noticing Agent at the address specified in any notice of entry of the Confirmation Order and served on the Reorganized Debtors no later than thirty (30) days after the effective date of such rejection. **Any Proofs of Claim arising from the rejection of an Executory Contract or Unexpired Lease not timely Filed with the Claims and Noticing Agent shall be automatically Disallowed without further order of the Bankruptcy Court, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, or their respective property, without the need for any objection by the Debtors or Reorganized Debtors, or further notice to, action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, and be subject to the permanent injunction set forth in Article VIII.F of this Plan, notwithstanding anything in a Proof of Claim to the contrary.** All Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be treated as a General Unsecured Claim, as applicable, pursuant to **Article III.C** of this Plan and may be objected to in accordance with the provisions of **Article VII** of this Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules. In such a scenario, the GUC Note Administrative Agent in coordination with the Reorganized Debtors shall issue a GUC Promissory Note to each Holder of an Allowed General Unsecured Claim for rejection damages, as if the GUC Promissory Note was issued on the Effective Date. Notwithstanding anything to the contrary in this Plan, the Debtors or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Rejection List at any time through and including thirty days after the Effective Date.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

The Debtors or the Reorganized Debtors, as applicable, shall pay Cure Claims, if any, on the Effective Date or as soon as reasonably practicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure Claims that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be Filed with the Bankruptcy Court on or before thirty (30) days after the Effective Date. Any such request that is not timely Filed shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court; *provided*, *however*, nothing herein shall prevent the Reorganized Debtors, in their sole discretion, from paying any Cure Claim despite the failure of the relevant counterparty to File such request for payment of such Cure Claim. Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure Claim. The Reorganized Debtors also may settle any Cure Claim without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before thirty (30) days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing, or such other setting as requested by the Debtors or Reorganized Debtors, for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

Notwithstanding anything to the contrary herein, if there is any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning

of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, and if such dispute is not resolved in a manner acceptable to the Reorganized Debtors in their sole discretion, the Reorganized Debtors shall have the right to add the applicable Executory Contract or Unexpired Lease to the Rejection List, in which case such Executory Contract or Unexpired Lease shall be deemed rejected as of the Effective Date and no Cure Claim shall be owed in respect of such Executory Contract or Unexpired Lease. The Reorganized Debtors may determine to add an Executory Contract or Unexpired Lease to the Rejection List pursuant to this paragraph before or after the Bankruptcy Court rules on any dispute regarding any Cure Claim, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption. Following the resolution of any dispute regarding any Cure Claim, provided that the Reorganized Debtors do not elect to add the applicable Executory Contract or Unexpired Lease to the Rejection List, payment of the Cure Claim shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute or as may be agreed upon by the Reorganized Debtors and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable Cure Claim pursuant to this **Article V.C** shall result in the full release and satisfaction of any Cure Claims, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure Claim has been fully paid pursuant to this Article V.C, shall be deemed Disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.**

D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or to the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations with respect to goods previously purchased by the Debtors pursuant to any rejected Executory Contracts or Unexpired Leases.

E. Insurance Policies.

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under this Plan. Unless otherwise provided in this Plan or listed on the Rejection List, on the Effective Date: (a) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policies and any agreements, documents, or instruments relating thereto shall revest in the Reorganized Debtors.

F. Workers' Compensation Program.

As of the Effective Date, the Debtors and Reorganized Debtors shall continue to honor their obligations under: (a) all applicable workers' compensation laws in all applicable states and (b) the Workers' Compensation Program. **All Proofs of Claim on account of workers' compensation, including the Workers' Compensation Program, shall be deemed withdrawn and expunged without any further notice to or action, order, or approval of the Bankruptcy Court**; *provided*, *however*, that nothing in the Plan shall limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable non-bankruptcy law with respect to the Workers' Compensation Program, and nothing herein shall be deemed to impose any obligations on the Debtors or their insurers in addition to what is provided for under the terms of the Workers' Compensation Program and applicable state law.

G. Reservation of Rights.

Nothing contained in this Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or Reorganized Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease. If there is a dispute regarding a Debtor's or Reorganized Debtor's liability under an assumed Executory Contract or Unexpired Lease, the Reorganized Debtors shall be authorized to move to have such dispute heard by the Bankruptcy Court pursuant to **Article XI** of this Plan.

H. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtor or the Reorganized Debtors liable thereunder in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed.

The Distribution Agent and the GUC Note Administrative Agent, as applicable, shall make distributions under the Plan on account of each Allowed Claim in the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. Unless the Bankruptcy Court orders otherwise, if, after an initial distribution in respect of a Claim, additional amounts are Allowed in respect of such Claim, the Distribution Agent and GUC Note Administrative Agent, as applicable, shall make distributions in respect of such additional Allowed amounts no later than thirty (30) days after such additional amounts are Allowed; *provided*, *however*, for General Unsecured Claims that are Disputed as of the Effective Date and become Allowed after the Effective Date, the Reorganized Debtors shall issue a GUC Promissory Note to the GUC Note Administrative Agent within ten (10) Business Days after any such Allowance to provide the Holder of such Claim the treatment provided in **Article III.C.6** of this Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

B. Distributions to Holders of Disputed Claims and Interests.

Except as otherwise set forth in the Plan or as otherwise deemed appropriate by the Debtors or the Reorganized Debtors (in each of their sole discretion): (i) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved as set forth in **Article VII** hereof; and (ii) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on account of the Allowed Claim unless and until all objections to the Disputed Claim have been resolved as set forth in **Article VII** hereof or the Disputed Claim has been Allowed or expunged.

C. Distribution Agent.

1. Powers of the Distribution Agent.

Except with respect to General Unsecured Claims, all distributions under this Plan shall be made by the Distribution Agent. The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof. The Distribution

Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Distribution Agent on or after the Effective Date (including taxes), and any reasonable compensation and expense reimbursement obligation (including reasonable attorneys' fees and expenses) shall be paid in Cash by the Reorganized Debtors.

D. GUC Note Administrative Agent and GUC Note Collateral Agent.

1. Powers of the GUC Note Administrative Agent.

All distributions under this Plan to General Unsecured Claims shall be made by the GUC Note Administrative Agent. The GUC Note Administrative Agent and GUC Note Collateral Agent shall be empowered to take all actions pursuant to the GUC Note Documents.

E. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be deemed closed and the Distribution Agent shall be authorized and entitled, but not required, to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. If a Claim is transferred twenty (20) or fewer days before the Distribution Record Date, the Distribution Agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

2. Delivery of Distributions in General.

Except as otherwise provided herein, the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated in the Debtors' records (including the address set forth in a Filed Proof of Claim, a written notice of address change delivered to the Reorganized Debtors, or the Debtors' Schedules) as of the date of any such distribution.

3. Manner of Payment.

At the option of the Distribution Agent, any Cash distribution to be made hereunder may be made by check, wire transfer, automated clearing house, or credit card, or as otherwise required or provided in any applicable agreements.

4. Minimum Distributions.

No Cash payment of less than $100.00 in the aggregate shall be made to a Holder of an Allowed Claim on account of such Allowed Claim.

5. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder of Allowed Claims is returned as undeliverable, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder; *provided*, *however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding

any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder of Claims to such property shall be discharged and forever barred. The Reorganized Debtors, and the Distribution Agent, as applicable, shall have no obligation to attempt to locate any Holder of an Allowed Claim other than by reviewing the Debtors' books and records and the Bankruptcy Court's filings, including reviewing any Filed Proof of Claim, written notice of address change delivered to the Reorganized Debtors, or the Debtors' Schedules.

A distribution shall be deemed unclaimed if a Holder has not: (i) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (ii) given notice to the Reorganized Debtors or Distribution Agent, as applicable, of an intent to accept a particular distribution; (iii) responded to the Reorganized Debtors' or Distribution Agent's, as applicable, requests for information necessary to facilitate a particular distribution; or (iv) taken any other action necessary to facilitate such distribution.

F. Compliance with Tax Requirements.

In connection with this Plan, to the extent applicable, the Debtors, Reorganized Debtors, Distribution Agent, GUC Note Administrative Agent, and any applicable withholding agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors, Reorganized Debtors, and Distribution Agent, as applicable, reserve the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and similar spousal awards, Liens, and encumbrances.

The Distribution Agent may require, as a condition to receipt of a distribution, that the Holder of an Allowed Claim provide any information necessary to allow the Distribution Agent to comply with any such withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority. If the Distribution Agent makes such a request and the Holder fails to comply before the date that is one hundred and eighty (180) days after the request is made, the amount of such distribution shall irrevocably revert to the applicable Reorganized Debtor and any Claim in respect of such distribution shall be discharged and forever barred from assertion against such Reorganized Debtor or its respective property.

G. No Postpetition or Default Interest on Claims.

Except as specified in **Article III.C.6** of this Plan or as otherwise specifically provided for in this Plan, the Cash Collateral Order, the Confirmation Order, the Plan Supplement, or applicable bankruptcy or non-bankruptcy law, postpetition and default interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against the Debtors shall be entitled to non-default or default interest accruing on or after the Petition Date on any such prepetition Claim.

H. Allocations.

To the extent this Plan, the Cash Collateral Order, the Confirmation Order, or applicable bankruptcy or non-bankruptcy law requires the payment of accrued but unpaid interest on prepetition Allowed Claims, distributions in respect of such Claims shall be allocated first to the principal amount of such Claims (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

I. Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the

exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

J. Setoffs and Recoupment.

Except as otherwise provided herein, each Reorganized Debtor pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised, settled, or assigned on or before the Effective Date (whether pursuant to this Plan, a Final Order, or otherwise); *provided*, *however*, that neither the failure to effect such a set off or recoupment nor the allowance of any Claim pursuant to this Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action.

In no event shall any Holder of Claims be entitled to set off any such Claim against any claim, right, or Cause of Action of the Debtor or Reorganized Debtor (as applicable), unless (i) the Debtors have consented; and (ii) such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

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. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor, a Reorganized Debtor, the Distribution Agent, or the GUC Note Administrative Agent, as applicable, on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under this Plan exceeds the amount of such Allowed Claim as of the date of any such distribution under this Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen (14) day grace period specified above until the amount is repaid.

2. GPX Claims.

Nothing herein modifies the obligations of Golden Pass and the Debtors under the GPX Settlement Documents with respect to the payment of GPX Claims. To the extent not satisfied prior to the Effective Date, Golden Pass and the Reorganized Debtors shall pay Allowed Claims that constitute GPX Claims, if any, pursuant to the terms of the GPX Settlement Documents and this Plan. Such valid Claims that constitute GPX Claims and that are satisfied by Golden Pass in accordance with the GPX Settlement Documents and this Plan shall not be the obligation of the Debtors, the Estates, the Reorganized Debtors, the Distribution Agent, or any of their Related Parties, subject to the terms of the GPX Settlement Documents and this Plan.

Any dispute between Golden Pass and the Debtors and/or Reorganized Debtors regarding whether any Claim, including any Administrative Claim, constitutes a valid GPX Claim subject to payment by Golden Pass under the GPX Settlement Documents shall be determined by the Bankruptcy Court.

Notwithstanding anything to the contrary herein, to the extent Golden Pass pays a transferee that has acquired a GPX Claim from the original Holder, such payments shall count against the GPX Direct Payment Cap to the extent

set forth in the GPX Settlement Documents, and the Debtors, the Reorganized Debtors, and Golden Pass shall have no obligations to the original Holder. To the extent Golden Pass paid an original Holder of a GPX Claim prior to any transfer of such Claim becoming effective, such payments shall count against the GPX Direct Payment Cap to the extent set forth in the GPX Settlement Documents, and the Debtors, the Estates, the Reorganized Debtors, the Distribution Agent, Golden Pass, and any of their Related Parties shall have no obligations to the transferee.

For the avoidance of doubt, Golden Pass shall have no obligation to pay any Disputed Claim or otherwise pay any GPX Claim inconsistent with the terms of the GPX Settlement Documents.

3. Claims Payable by Insurers.

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim shall be Disallowed and expunged 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 applicable insurance coverage is insufficient to provide the treatment to an Allowed Claim required by **Article III** of this Plan, the Holder of such Allowed Claim shall have an Allowed General Unsecured Claim against the applicable Debtor's Estate for the deficiency. To the extent that any insurer reduces the amount payable to the Holder of an Allowed Claim on account of a SIR or deductible under any applicable insurance policy, such Holder shall have an Allowed General Unsecured Claim against the applicable Debtor's Estate equal to the amount of such reduction.

Nothing in this Plan shall be construed to limit, extinguish, or diminish the insurance coverage that may exist or shall be construed as a finding liquidating any Claim payable pursuant to an insurance policy.

4. Applicability of Insurance Policies.

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Claims Administration Responsibilities.

After the Effective Date, the Reorganized Debtors shall have the sole authority (i) to File, withdraw, or litigate to judgment objections to Claims; (ii) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (iii) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, after the Effective Date, each of the Reorganized Debtors shall have the right to object to Claims and shall retain any and all rights and defenses that the Debtors had with respect to any Claim immediately before the Effective Date, including the Causes of Action retained pursuant to **Article IV.L** of this Plan.

Any objections to, or requests for estimation of, General Unsecured Claims (excluding General Unsecured Claims that are contingent or unliquidated) must be Filed on or before the Claims Objection Deadline. If an objection or request for estimation is not Filed with respect to a General Unsecured Claim by the Claims Objection Deadline, such Claim shall be deemed Allowed, unless (i) such Claim is otherwise Disputed or Disallowed under this Plan or Final Order; (ii) such Claim is contingent or unliquidated as of the Claims Objection Deadline; or (iii) the Claims Objection Deadline is extended with respect to specific Claims

by the Bankruptcy Court for good cause shown by the Debtors. If the Bankruptcy Court orders the Claim Objection Deadline extended with respect to specific Claims and an objection or request for estimation is not Filed with respect to any such specific Claim by the extended Claims Objection Deadline, such Claim shall be deemed Allowed, unless (i) such Claim is otherwise Disputed or Disallowed under this Plan or Final Order or (ii) such Claim is contingent or unliquidated as of the extended Claims Objection Deadline.

Any Holder of a General Unsecured Claim that is contingent or unliquidated as of the Claims Objection Deadline shall provide prompt notice to the Reorganized Debtors if such Claim later becomes non-contingent and liquidated. The Reorganized Debtors may object to, or request estimation of, such Claim by no later than one hundred and eighty (180) days after receiving such notice and may withhold any distributions on such Claim until the expiration of such 180-day period or the resolution of any objection or request for estimation, whether by Final Order or agreement between the Reorganized Debtor and the Holder of such Claim. The Reorganized Debtors may seek an extension of the deadline to object to, or request estimation of, such Claim for good cause shown.

Notwithstanding anything to the contrary herein, if any General Unsecured Claim is Allowed after the GUC Promissory Notes are satisfied and discharged, the Reorganized Debtors, the Distribution Agent, the GUC Note Administrative Agent, or their successors, as applicable, shall distribute to the Holder of such General Unsecured Claim Cash in an amount equal to the value of the property such Holder is otherwise entitled to receive under **Article III.C.6** of this Plan on the Effective Date, inclusive of any interest such Holder would have received under the GUC Promissory Notes from the Effective Date through Maturity (as defined in the GUC Note Term Sheet).

B. Allowance of Claims.

Except as expressly provided in the Plan or in any Order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim. The Debtors or Reorganized Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law.

C. Estimation of Claims.

Before, on, or after the Effective Date, the Debtors and the Reorganized Debtors, as applicable, may at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party in interest previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. A Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Reorganized Debtors, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim; *provided*, *however*, such limitation shall not apply to Claims against any of the Debtors requested by the Debtors to be estimated for voting purposes only.

Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen (14) calendar days after the date on which such Claim is estimated. All of the Claims and objection, estimation, and resolution procedures set forth in this Plan are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

D. Adjustment to Claims Register Without Objection.

Any duplicate Claim, any Claim (filed or scheduled) that has been paid or satisfied, or any Claim that has been amended or superseded, cancelled, or otherwise expunged (including pursuant to the Plan or the Confirmation Order), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Debtors or the Reorganized Debtors, as applicable, upon stipulation or any agreement in writing, including, without limitation, email correspondence, between the Debtors and the Holder of the applicable Claim without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Disallowance of Claims or Interests.

Except as otherwise agreed to by the Debtors or the Reorganized Debtors, as applicable, any and all Proofs of Claim filed after the Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, Order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless the Bankruptcy Court shall have determined by a Final Order, on or before the Confirmation Hearing, that cause exists to extend the Claims Bar Date as to such Proof of Claim on the basis of excusable neglect.

All Claims Filed on account of an Indemnification Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed by the Reorganized Debtors, or honored or reaffirmed, as the case may be, pursuant to this Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

All Proofs of Claim Filed on account of an Employee Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent the Reorganized Debtors elect to honor such Obligation, without any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in exchange for the Debtors' assumption of all obligations under the Deferred Compensation Plan and the Reinstatement of all Deferred Compensation Plan Claims pursuant to **Article III.C.4** of this Plan, any and all Proofs of Claim asserting Deferred Compensation Plan Claims shall be deemed satisfied and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court. The rights of the Debtors, the Reorganized Debtors, and the Holders of Deferred Compensation Plan Claims with respect to such Deferred Compensation Plan Claims shall be fully reserved, and any disputes relating to amounts owed in connection with such Deferred Compensation Plan Claims shall be resolved by the Reorganized Debtors and the applicable Holder(s) in the ordinary course of business after the Effective Date.

F. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever Disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless before the Confirmation Date: (i) such Claim has been adjudicated as non-contingent; or (ii) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered before the Confirmation Date determining such Claim is no longer contingent.

G. Amendments to Proofs of Claim.

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Proof of Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and any such new or amended Claim or Proof of Claim Filed after the Effective Date shall be deemed Disallowed in full and expunged without any further action or notice to the Bankruptcy Court; *provided*, *however*, the filing of an unauthorized amendment shall not affect the underlying Claim or Proof of Claim. Nothing in this paragraph shall impair any claimant's ability to seek leave from the Bankruptcy Court to amend a Claim or Proof of Claim.

H. No Distributions Pending Allowance.

Notwithstanding any other provision of this Plan, if any portion of a Claim is a Disputed Claim, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim or Interest unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with **Article VI** of this Plan.

J. Single Satisfaction of Claims.

In no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim or Interest exceed 100 percent of the underlying Allowed Claim or Interest plus applicable interest required to be paid under this Plan, if any, and the Allowed amount of any Claim or Interest shall be automatically reduced dollar-for-dollar on account of any payments made by any third parties on account of such Claim or Interest (including as set forth in **Article VI.J** of this Plan).

ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Discharge of Claims and Termination of Interests.

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in this Plan, the Confirmation Order, or in any contract, instrument, or other agreement or document created or entered into pursuant to this Plan, the distributions, rights, and treatment that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims or Interests, and GPX or any of its assets or properties with respect to any Claims that constitute GPX Claims, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted this Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date. For the avoidance of doubt, the discharge provided herein shall discharge, release, and extinguish any right of any Holder of any Claim to file, assert, levy, or attach any Liens or initiate any claim against any bonds or the Sureties on account of any Claims against any of the Debtors that are discharged, satisfied, or released pursuant to this Plan, including on account of General Unsecured Claims that are satisfied in full under this Plan, or otherwise enforce, collect, or recover on account of any such Claims other than as expressly permitted under this Plan. Further, and for the avoidance of doubt, the discharge provided herein shall discharge, release, and extinguish any right of any Holder of any GPX Claim to file, assert, levy, or attach any Liens against property of Golden Pass on account of any GPX Claims against any of the Debtors that are discharged, satisfied, or released pursuant to this Plan, or otherwise enforce, collect, or recover on account of any such GPX Claims against Golden Pass or any property interest of Golden Pass.

B. Release of Liens.

Except as otherwise provided in this Plan, the Confirmation Order, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective

Date and concurrently with the applicable distributions made pursuant to this Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III.C hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, including any bonds related to the Debtors, shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The foregoing direction to release Liens shall be considered a direction in accordance with, as applicable, the Prepetition Credit Agreement, as if such direction included the signatures of the necessary lenders thereunder to direct the applicable agent to take the actions contemplated thereby. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

To the extent that any Holder of a Secured Claim that has been satisfied or discharged pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, including with respect to any bonds related to the Debtors, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

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 this 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 this 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, 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 this 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 Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, 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 this 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 this Article VIII.C, 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 this 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 this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) essential to Confirmation of this 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 this 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.

D. Releases by Third Parties.

Except as otherwise expressly set forth in this Plan or the Confirmation Order, and except for the rights that remain in effect from and after the Effective Date to enforce this 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 this 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 Sunbelt Promissory Note, the GUC Promissory

Notes, the GUC Note Documents, 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 this 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 herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of this 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.

E. Exculpation.

Except as otherwise specifically provided in this 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 Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, 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 this Plan, or the distribution of property under this 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 this Plan and the Confirmation Order.

The Exculpated Parties set forth above have, and upon Confirmation of this 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 this 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 this Plan or such distributions made pursuant to this Plan.

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 this Plan in relation to any Claim or Interest that is extinguished, discharged, satisfied, or released pursuant to this Plan.

Except as otherwise expressly provided in this Plan or the Confirmation Order, or for obligations issued or required to be paid pursuant to this 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 this 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 this Plan, including on account of General Unsecured Claims that are satisfied in full under this 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 enforcing, collecting, or recovering 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 this 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 this 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 Sunbelt Promissory Note, the GUC Promissory Notes, the GUC Note Documents, the Parent Capital Contribution, the GPX Settlement Documents, the Cash Collateral Order, the Disclosure Statement, the solicitation of votes with respect to this 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 this Plan, or the distribution of property under this 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 this 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 this 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 this Plan and the Confirmation Order from bringing an action to enforce the terms of this 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 this Plan and the Confirmation Order.

G. Limitation of Liability of Officers, Directors, and Agents.

The provisions of section 1125(e) of the Bankruptcy Code govern the protection from liability with respect to all matters governed by section 1125(e). The Debtors and their successors (and the officers, directors or agents of the Debtors or their successors) have no liability for conduct that was authorized by an order of the Bankruptcy Court. With respect to conduct during the period from the Petition Date through the Effective Date, the Debtors and their successors (and the officers, directors or agents of the Debtors or their successors) may be subject to liability only for conduct that constituted actual fraud, gross negligence, or willful misconduct, provided that such limitations on liability exist under applicable non-bankruptcy law. Notwithstanding the foregoing, this Plan does not limit liability for conduct for which the Bankruptcy Court's approval was required by applicable law, but for which approval was not granted.

H. Waiver of Statutory Limitations on Releases.

Each Releasing Party in each of the releases contained in this Plan expressly acknowledges that although ordinarily a general release may not extend to Claims that the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, each Releasing Party has carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or Claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law that provides that a release does not extend to Claims that the claimant does not know or suspect to exist in its favor at the time of executing the release, which if known by it may have materially affected its settlement with the Released Party. The releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

I. Special Provision Regarding the United States Government.

Nothing in the Confirmation Order or the Plan shall effect a release of any Claim by the United States government or any of its agencies or any state and local authority whatsoever, including without limitation any Claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United

States or any state and local authority against any party or person, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any Claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any Claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

J. Protections Against Discriminatory Treatment.

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

K. Document Retention.

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policies, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

ARTICLE IX.
CONDITIONS PRECEDENT TO CONSUMMATION OF THIS PLAN

A. Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of **Article IX.B** hereof:

1. The Bankruptcy Court shall have entered the Confirmation Order which shall be in form and substance reasonably satisfactory to the Debtors and the Committee and consistent in all material respects with the terms and conditions of the Plan;

2. The Confirmation Order shall be in full force and effect;

3. The settlements embodied in the Plan shall have been approved by the Bankruptcy Court and incorporated in the Confirmation Order;

4. The A&R Credit Facility Documents, in form and substance consistent with the A&R Credit Facility Term Sheet, shall have been executed and delivered by the Debtors and the A&R Credit Facility Agent;

5. The Sunbelt Promissory Note, in form and substance consistent with the Sunbelt Term Sheet, shall have been executed and delivered by the Debtors and Sunbelt;

6. The Debtors and the GUC Note Administrative Agent shall have executed the GUC Promissory Notes, and the GUC Promissory Notes shall have vested in the GUC Note Administrative Agent, for the benefit of, and distributions to, Holders of Allowed General Unsecured Claims;

7. The Parent Capital Contribution shall have been contributed to, and vested in, ZHI;

8. The Exit Intercreditor Agreement shall be executed in form and substance consistent with the Plan; and

9. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, actions, documents, and other agreements that are necessary to implement and effectuate the Plan and each of the other Restructuring Transactions.

B. Waiver of Conditions.

The conditions to the Effective Date set forth in this **Article IX** may be waived, in whole or in part, by the Debtors without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate this Plan; *provided, however*, the Debtors shall obtain the consent of the Prepetition Credit Facility Agent with respect to any waiver (in whole or in part) of the condition set forth in **Article IX.A.4**, and the consent of the Committee with respect to any waiver (in whole or in part) of the condition set forth in **Article IX.A.6**.

C. Substantial Consummation.

Consummation of this Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

D. Effect of Failure of Conditions.

If Consummation does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the Debtors, Claims, or Interests; (2) prejudice in any manner the rights of the Debtors, any Holders of Claims or Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders of Claims or Interests, or any other Entity, respectively.

ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THIS PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in this Plan, subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), the Debtors reserve the right to modify this Plan without additional disclosure pursuant to section 1125 of the Bankruptcy Code prior to the Confirmation Date and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan; *provided, however*, that the Debtors shall obtain the consent of the Committee (which consent shall not be unreasonably withheld) for any alterations, amendments, supplements, or modifications to the Plan impacting the treatment of Holders of General Unsecured Claims under the Plan. After the Confirmation Date and before substantial consummation of the Plan, the Debtors may initiate proceedings in the Bankruptcy Court pursuant to section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order, relating to such matters as may be necessary to carry out the purposes and intent of the Plan.

After the Confirmation Date, but before the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan (including the Plan Supplement) without further order or approval of the Bankruptcy Court; *provided, however,* that such adjustments and modifications do not materially and adversely affect the treatment of Holders of Claims or Interests.

B. Effect of Confirmation on Modifications.

Entry of a Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of, or relating to, the Chapter 11 Cases, the Confirmation Order, and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or Allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code, the Confirmation Order, or this Plan;

3. resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is a party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including Cure Claims; (ii) any dispute regarding whether a contract or lease is or was executory, expired, or terminated; (iii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iv) any other issue related to any Executory Contracts and Unexpired Leases; or (v) any dispute regarding whether the Plan or any Restructuring Transactions trigger any cross-default or change of control provision in any contract or agreement;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan and adjudicate any and all disputes arising from or relating to distributions under this Plan or the Confirmation Order;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any and all matters related to Causes of Action that may arise from or in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

7. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

8. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with this Plan, the Confirmation Order, or the Disclosure Statement;

9. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan or the Confirmation Order and the administration of the Estates;

11. hear and determine disputes arising in connection with the interpretation, implementation, effect, or enforcement of this Plan or the Plan Supplement, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

12. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of this Plan or the Confirmation Order;

13. adjudicate, decide, or resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in **Article VIII** hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, exculpations, and other provisions;

14. adjudicate, decide, or resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to **Article VI** hereof;

15. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

16. determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or any contract, instrument, release, indenture, or other agreement or document created in connection with this Plan, the Plan Supplement, or the Disclosure Statement;

17. enter an order concluding or closing the Chapter 11 Cases;

18. consider any modifications of this Plan to cure any defect or omission or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. adjudicate, decide, or resolve disputes as to the ownership of any Claim or Interest;

21. adjudicate, decide, or resolve all matters related to any subordinated Claim;

22. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

23. adjudicate, decide, or resolve matters concerning state, local, and U.S. federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

24. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

25. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in this Plan, including under **Article VIII** hereof;

26. hear and determine all disputes involving the obligations under, or the terms of, the GPX Final Settlement Order;

27. enforce all orders previously entered by the Bankruptcy Court in connection with the Chapter 11 Cases;

28. hear any other matter not inconsistent with the Bankruptcy Code; and

29. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Person or Entity, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Person or Entity's rights arising from or obligations incurred in connection with the Plan.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan, the Plan Supplement, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

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.

Unless 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.

As of the Effective Date, notwithstanding anything in this **Article XI** to the contrary, the A&R Credit Facility Documents shall be governed by the jurisdictional provisions therein and the Bankruptcy Court shall not retain any jurisdiction with respect thereto.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Subject to **Article IX.A** hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan (including, for the avoidance of doubt, the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted or rejected this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this Plan or the Confirmation Order, each Entity acquiring property under this Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and Interests shall be as fixed, adjusted, or compromised, as applicable, pursuant to this Plan and the Confirmation Order, regardless of whether any such Holder of a Claim or Interest has voted on this Plan.

B. Waiver of Stay.

The requirement under Bankruptcy Rule 3020(e) that an order confirming a plan is stayed until the expiration of fourteen (14) days after entry of the order shall be waived by the Confirmation Order. The Confirmation Order shall take effect immediately and shall not be stayed pursuant to the Bankruptcy Code, Bankruptcy Rules 3020(e), 6004(h), 6006(d), or 7062 or otherwise.

C. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary to effectuate and further evidence the terms and conditions of this Plan or the Confirmation Order. The Debtors, the Reorganized Debtors, the GUC Note Administrative Agent, or the GUC Note Collateral Agent, as applicable, and all Holders of Claims receiving distributions pursuant to this Plan and all other parties in interest, shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan and the Confirmation Order.

D. Payment of Statutory Fees.

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by each of the Debtors or the Reorganized Debtors (or the Distribution Agent on behalf of each of the Reorganized Debtors), as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

The Debtors shall file all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Reorganized Debtors shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee, which reports shall include a separate schedule of disbursements made during the applicable period, attested to by the Reorganized Debtors. The obligation to file quarterly reports shall continue until the earliest of the Debtors' cases being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

E. Statutory Committee and Cessation of Fee and Expense Payment.

On the Effective Date, the Committee shall dissolve automatically and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases, except with respect to (i) final fee applications of the Professionals asserting Professional Fee Claims, including any appeals in connection therewith, or (ii) for purposes of participating in any appeals of the Confirmation Order. The Reorganized Debtors shall no longer be responsible for paying any fees or expenses incurred after the Effective Date by the members of or advisors to the Committee, other than such fees and expenses incurred in connection with any appeals of the Confirmation Order. Any reasonable and documented fees or expenses of the Committee or its advisors incurred between the Confirmation Date and the Effective Date (or after the Effective Date with respect to any appeals of the Confirmation Order) shall be paid by the Debtors or Reorganized Debtors, as applicable, without the necessity of the filing of a fee application for such fees and expenses.

F. Reservation of Rights.

Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor or any Entity unless and until the Effective Date occurs.

G. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, manager, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Notices.

To be effective, all notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to the Debtors or the Reorganized Debtors, to:
Zachry Holdings, Inc.
P.O. Box 240130
San Antonio, TX 78224
Attention: Jay Old

with copies (which shall not constitute notice) to:

White & Case LLP
609 Main Street, Suite 2900
Houston, Texas 77002
Attention: Charles R. Koster
Email: charles.koster@whitecase.com

-and-

White & Case LLP
111 South Wacker Drive
Chicago, IL 60606
Attention: Bojan Guzina, Andrew F. O'Neill, William A. Guerrieri, Adam T. Swingle
Email: bojan.guzina@whitecase.com;
aoneill@whitecase.com;
william.guerrieri@whitecase.com;
adam.swingle@whitecase.com

2. if to the Committee, to:
Jason Brookner
Gray Reed LLP
1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
Attention: Jason S. Brookner
Email: jbrookner@grayreed.com

-and-

Ehud Barak
Daniel Desatnik
Proskauer LLP
Eleven Times Square
New York, NY 10036-8299
Attention: Ehud Barak, Daniel Desatnik
Email: ebarak@proskauer.com;
ddesatnik@proskauer.com

Paul V. Possinger
Proskauer LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, IL 60602-4342
Attention: Paul V. Possinger
Email: ppossinger@proskauer.com

3. if to the Prepetition Credit Facility Agent, to:
Bank of America, N.A.
Agency Management
900 W. Trade St.
Gateway Village – 900 Building
NC1-026-06-03
Charlotte, NC 28255
Attention: Dianna (Dottie) Benner

with copies (which shall not constitute notice) to:

McGuireWoods LLP
845 Texas Ave., 24th Floor
Houston, TX 77002
Attention: Demetra Liggins, Andrew C. Papa
Email: dliggins@mcguirewoods.com;
apapa@mcguirewoods.com

-and-

McGuireWoods LLP
1251 Avenue of Americas, 20th Floor
New York, New York 10020-1104
Attention: Shawn R. Fox
Email: sfox@mcguirewoods.com

After the Effective Date, the Debtors have authority to send a notice to Entities receiving documents pursuant to Bankruptcy Rule 2002 that such Entities must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

I. Term of Injunctions or Stays.

Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

J. Entire Agreement.

Except as otherwise indicated, and without limiting the effectiveness of this Plan (including, for the avoidance of doubt, the Plan Supplement), the Confirmation Order supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan, the Confirmation Order, the Plan Supplement, and the documents related thereto.

K. Exhibits.

All exhibits and documents included in this Plan, the Confirmation Order, and the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full in this Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at www.veritaglobal.net/ZHI or the Bankruptcy Court's website at http://www.txs.uscourts.gov/.

L. Deemed Acts.

Subject to and conditioned on the occurrence of the Effective Date, whenever an act or event is expressed under this Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party by virtue of this Plan and the Confirmation Order.

M. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to this Plan and may not be deleted or modified without the Debtors' or Reorganized Debtors' consent, as applicable; and (3) non-severable and mutually dependent.

N. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, each of the Released Parties and Exculpated Parties will be deemed to have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and in a manner consistent with the Disclosure Statement, the Plan, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws, and regulations in connection with all of their respective activities relating to support and consummation of the Plan and are entitled to the protections of section 1125(e) of the Bankruptcy Code and all other applicable protections and rights provided in the Plan. Without limiting the generality of the foregoing, upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code and other applicable law.

O. Request for Expedited Determination of Taxes.

The Debtors and Reorganized Debtors shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

P. Closing of Chapter 11 Cases.

Upon the occurrence of the Effective Date, the Reorganized Debtors shall be permitted to (1) close all of the Chapter 11 Cases except for one of the Chapter 11 Cases as determined by the Reorganized Debtors, and all contested matters relating to each of the Debtors, including objections to Claims, and enforcement of this Plan shall be administered and heard in such Chapter 11 Case and (2) change the name of the remaining Debtor and case caption of the remaining open Chapter 11 Case as desired, in the Reorganized Debtors' sole discretion.

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, including full satisfaction of all obligations of the Reorganized Debtors under this Plan, File with the Bankruptcy Court all

documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

Q. Waiver or Estoppel.

Upon the Effective Date, each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

R. Creditor Default.

An act or omission by a Holder of a Claim in contravention of the provisions of this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Reorganized Debtors may seek to hold the defaulting party in contempt of the Confirmation Order and shall be entitled to reasonable attorneys' fees and costs of the Reorganized Debtors in remedying such default. Upon the finding of such a default by a creditor, the Bankruptcy Court may: (a) designate a party to appear, sign and/or accept the documents required under the Plan on behalf of the defaulting party, in accordance with Bankruptcy Rule 7070; (b) enforce the Plan by order of specific performance; (c) award judgment against such defaulting creditor in favor of the Reorganized Debtors in an amount, including interest, to compensate the Reorganized Debtors for the damages caused by such default; and (d) make such other order as may be equitable that does not materially alter the terms of this Plan.

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Dated: February 23, 2025

ZACHRY HOLDINGS, INC.
(for itself and on behalf of each of the other Debtors and Debtors in Possession)

By: */s/ Mohsin Y. Meghji*
Name: Mohsin Y. Meghji
Title: Chief Restructuring Officer

Exhibit B

Exit ICA Term Sheet

INTERCREDITOR AGREEMENT

Summary of Terms and Conditions

Reference is made to (i) that certain amended and restated credit agreement, to be entered into by and among Zachry Holdings, Inc., a Delaware corporation (the "Company"), Zachry EPC Holdings, LLC, a Texas limited liability company and Zachry Plant Services Holdings, Inc., a Texas corporation (collectively, the "Borrowers" and, each individually, a "Borrower"), the Company, as holdings, the several lenders from time to time parties thereto (the "First Lien Lenders"), Bank of America, N.A., as administrative agent and collateral agent (the "First Lien Agent") and each other party thereto, (ii) that certain second lien secured promissory note(the "Sunbelt Note") to be entered into by and among the Company and Sunbelt Rentals, Inc. (the "Second Lien Holder") and (iii) that certain third lien secured promissory note (the "GUC Promissory Note") to be entered into by and among the Company, Holders of General Unsecured Claims (the "Third Lien Holders") and the administrative agent under the GUC Promissory Note (the "Third Lien Agent"). The relative rights of the First Lien Lenders, the Second Lien Holder and the Third Lien Holders in the Loan Party Collateral (as defined in the A&R Credit Facility Term Sheet) will be governed by an intercreditor agreement to be entered into by and between the First Lien Agent, the Second Lien Holder and the Third Lien Agent on the terms set forth below and otherwise on terms and conditions mutually agreed to by the First Lien Agent, the Second Lien Holder and the Third Lien Agent. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1978].

SUBORDINATION

Priority of Liens:	The priority of liens on the Collateral is in the following order: (1) Liens securing all obligations outstanding under the A&R Credit Facility Documents, certain hedging agreements or cash management agreements, and documentation (the "Additional First Lien Documentation") with respect to any other indebtedness issued or guaranteed by any Loan Party which are secured by any or all of the Collateral on a basis that is senior to the Second Lien Obligations (as defined below), including all interest, fees, costs and expenses accrued or accruing (or which would, absent commencement of an insolvency proceeding, accrue) after commencement of an insolvency proceeding (the "First Lien Obligations"); (2) Liens securing all obligations outstanding under the Sunbelt Note, including all interest, fees, costs and expenses accrued or accruing (or which would, absent commencement of an insolvency proceeding, accrue) after commencement of an insolvency proceeding (the "Second Lien Obligations"); and

(3) Liens securing all obligations outstanding under the GUC Promissory Note, including all interest, fees, costs and expenses accrued or accruing (or which would, absent commencement of an insolvency proceeding, accrue) after commencement of an insolvency proceeding (the "Third Lien Obligations").

There will be no cap on the maximum principal amount of loans and commitments under the First Lien Documentation and under the Additional First Lien Documentation. The amount of Second Lien Obligations shall be capped at an amount to be agreed between the Second Lien Holder and the Third Lien Agent. The amount of Second Lien Obligations and Third Lien Obligations shall be capped at an amount set forth in the A&R Credit Facility Documents.

The Collateral granted to the First Lien Agent on behalf of the First Lien Holders, the Second Lien Holder and the Third Lien Agent on behalf of the Third Lien Holders shall not include any assets that are not Collateral granted to each of such other persons. No person shall guaranty any of the First Lien Obligations, Second Lien Obligations or Third Lien Obligations that is not a guarantor or borrower, as applicable, of the First Lien Obligations, the Second Lien Obligations and the Third Lien Obligations.

The priority of liens shall remain in full force and effect irrespective of the time, manner, or order of the grant, attachment, or perfection of a lien.

Application of Payments:

Until (a) the payment in full in cash of the principal of, interest on (including postpetition interest, fees, expenses and costs), and other outstanding amounts of First Lien Obligations, termination of all commitments constituting First Lien Obligations, termination/cash collateralization of all letters of credits issued and constituting First Lien Obligations, and termination/cash collateralization of any applicable hedging agreements or cash management agreements (the "Discharge of First Lien Obligations"), (b) the payment in full in cash of the principal of, interest on (including postpetition interest, fees, expenses and costs), and other outstanding amounts of Second Lien Obligations (the "Discharge of Second Lien Obligations") and (c) the payment in full in cash of the principal of, interest on (including postpetition interest, fees, expenses and costs), and other outstanding amounts of Third Lien Obligations (the "Discharge of Third Lien Obligations"), Collateral, proceeds or other distributions with respect to the Collateral received in connection with an enforcement action as a secured creditor

pertaining to the Collateral (an "Enforcement Action") or an insolvency proceeding will be applied:

(a) first, to the First Lien Obligations (including permanent reduction of Exit Revolving Commitments under the Exit Revolving Facility);

(b) second, upon the Discharge of First Lien Obligations, to the Second Lien Obligations;

(c) third, upon the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, to the Third Lien Obligations; and

(d) fourth, upon the Discharge of First Lien Obligations, the Discharge of Second Lien Obligations and the Discharge of Third Lien Obligations, to the applicable ZHI Entity Guarantor (as defined in the A&R Credit Facility Term Sheet) or as otherwise required by law.

Payment Turnover:

Until the Discharge of First Lien Obligations has occurred, Collateral or proceeds thereof received by either (i) an agent or trustee with respect to the Second Lien Obligations or any other holders of the Second Lien Obligations (a "Second Lien Claimholder") or (ii) an agent or trustee with respect to the Third Lien Obligations or any other holders of the Third Lien Obligations (a "Third Lien Claimholder"), in each case in connection with an Enforcement Action, otherwise in contravention of the Intercreditor Agreement, or in connection with an insolvency proceeding will be paid over to a designated First Lien Claimholder (as defined below).

Following the Discharge of First Lien Obligations and until the Discharge of Second Lien Obligations, Collateral or proceeds thereof received by an agent or trustee with respect to First Lien Obligations or the Third Lien Obligations or any other holders of the First Lien Obligations (a "First Lien Claimholder") or any Third Lien Claimholder in connection with an Enforcement Action, otherwise in contravention of the Intercreditor Agreement, or in connection with an insolvency proceeding will be paid over to a designated Second Lien Claimholder.

Following the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations and until the Discharge of Third Lien Obligations, Collateral or proceeds thereof received by an agent or trustee with respect to the First Lien Obligations or the Second Lien Obligations or any First Lien Claimholder or Second Lien Claimholders in connection with an Enforcement Action, otherwise in contravention of the Intercreditor Agreement, or in connection with an insolvency proceeding will be paid over to a designated Third Lien Claimholder.

Standstill Period:	Second Lien Claimholders may commence an Enforcement Action with respect to the Collateral or otherwise exercise rights under applicable law if (a) the Discharge of First Lien Obligations has occurred, or (b) a 180 day standstill period has elapsed, and no First Lien Claimholder is then diligently pursing an Enforcement Action against any Collateral or diligently attempting to vacate any stay against such exercise, or any Loan Party is subject of an insolvency proceeding; provided that the Second Lien Holder shall give the First Lien Agent at least 15 days prior written notice prior to taking any Enforcement Action (which notice may be given during the standstill period). The standstill period may be triggered by the Second Lien Claimholders providing written notice to a designated representative of the First Lien Claimholders upon (i) any payment default under the First Lien Documentation (as in effect on the effective date thereof or from time to time and irrespective of any waiver thereof), (ii) any payment default under the Second Lien Documentation or (iii) a breach of the restricted payments covenant under the Second Lien Documentation. Notwithstanding the foregoing, Second Lien Claimholders shall have all rights as an unsecured creditor and may exercise all rights and remedies available thereto to the extent not specifically waived, provided, that if any Second Lien Claimholder becomes a judgment lien creditor in respect of Collateral as a result of enforcement thereof, such judgment lien shall be subordinated to liens securing First Lien Obligations. Third Lien Claimholders may commence an Enforcement Action with respect to the Collateral or otherwise exercise rights under applicable law if (a) the Discharge of First Lien Obligations and Discharge of Second Lien Obligations has occurred, or (b) a 270 day standstill period (or, after the Discharge of First Lien Obligations, a 90-day standstill period) and no First Lien Claimholder or Second Lien Claimholder is then diligently pursing an Enforcement Action against any Collateral or diligently attempting to vacate any stay against such exercise, or any Loan Party is subject of an insolvency proceeding. The standstill period may be triggered by the Third Lien Claimholders providing written notice to a designated representative of the First Lien Claimholders and Second Lien Claimholders upon (i) any payment default under the First Lien Documentation (as in effect on the effective date thereof or from time to time and irrespective of any waiver thereof), (ii) any payment default under the Third Lien Documentation or (iii) a breach of the restricted payments covenant under the Third Lien Documentation. Notwithstanding the foregoing, Third Lien Claimholders shall have all rights as an unsecured creditor and may exercise all rights and remedies available thereto to the extent not specifically waived, provided, that if any Third Lien Claimholder becomes a judgment lien creditor in respect of Collateral as a result of enforcement thereof, such judgment lien

shall be subordinated to liens securing First Lien Obligations and Second Lien Obligations.

Release of Liens:

If in connection with (1) a First Lien Claimholder's Enforcement Action in respect of the Collateral or (2) a disposition of Collateral not prohibited by the terms of the First Lien Documentation from time to time in effect, the First Lien Claimholders release any liens on any part of the Collateral or release any Guarantor from its obligations under its guaranty of the First Lien Obligations, then the liens of the Second Lien Claimholders and the Third Lien Claimholders on such Collateral and the obligations of such Guarantor under its guaranty of the Second Lien Obligations and the Third Lien Obligations, shall in each case be automatically released to the same extent as the liens of such First Lien Claimholders, or the obligations of such Guarantor under its guaranty of the First Lien Obligations, as applicable, are released (but shall apply to any remaining proceeds of such disposition of Collateral that are not otherwise utilized to repay the First Lien Obligations).

If in connection with (1) a Second Lien Claimholder's Enforcement Action in respect of the Collateral or (2) a disposition of Collateral not prohibited by the terms of the First Lien Documentation, not prohibited by the terms of the Second Lien Documentation and not prohibited by the terms of the Third Lien Documentation, the Second Lien Claimholders release any liens on any part of the Collateral or release any Guarantor from its obligations under its guaranty of the Second Lien Obligations, then the liens of the Third Lien Claimholders on such Collateral and the obligations of such Guarantor under its guaranty of the Third Lien Obligations, shall in each case be automatically released to the same extent as the liens of such Second Lien Claimholders, or the obligations of such Guarantor under its guaranty of the Second Lien Obligations, as applicable, are released (but shall apply to any remaining proceeds of such disposition of Collateral that are not otherwise utilized to repay the Second Lien Obligations).

The First Lien Agent and the First Lien Claimholders shall have the sole and exclusive right, subject to the rights of Grantors under the First Lien Documents, to adjust and settle any claim under any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. All proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the rights of Grantors under the First Lien Documents and the Second Lien Documents, first to the First Lien Claimholders, then to Second Lien Claimholders and finally to the Third Lien

Claimholders in accordance with the priorities set forth herein, or as a court of competent jurisdiction may otherwise direct.

INSOLVENCY PROCEEDINGS

DIP Financing / Cash Collateral:

Until the Discharge of First Lien Obligations, the Second Lien Claimholders and the Third Lien Claimholders will not contest any debtor-in-possession financing ("DIP Financing") or the use of cash collateral if the designated First Lien Claimholder consents thereto; provided that (i) the aggregate principal amount of such DIP Financing, together with the aggregate outstanding First Lien Obligations (including any roll-up), does not exceed the DIP Cap, (ii) such DIP Financing or cash collateral order (A) does not compel any Grantor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in such DIP Financing documentation or the DIP Financing order or (B) does not require the sale or other liquidation of a material portion of the Collateral prior to a default under such DIP Financing documentation or cash collateral order (but may include sale or plan milestones providing for the sale or reorganization of each Grantor's business as a going concern that are intended to cause the applicable Grantor to consummate such sale or reorganization as soon as practicable after the commencement of an insolvency proceeding), and (iii) the liens securing such DIP Financing shall be senior to or pari passu with the liens of the First Lien Claimholder on the Collateral securing the then outstanding First Lien Obligations (collectively, the "DIP Financing Conditions").

"DIP Cap" shall mean 130% of the aggregate principal amount of First Lien Obligations outstanding at any time.

Sale of Collateral:

Second Lien Claimholders and Third Lien Claimholders will not object in such capacities, and will be deemed to have consented to a 363 sale of Collateral to which the designated First Lien Claimholder consents in writing if (a) the liens of the Second Lien Claimholders attach to the net proceeds with the same priority as their liens on the Collateral which liens are subject to the Intercreditor Agreement, (b) the liens of the Third Lien Claimholders attach to the net proceeds with the same priority as their liens on the Collateral which liens are subject to the Intercreditor Agreement and (c) the net proceeds are distributed in accordance with the application of payments under the Intercreditor Agreement; provided that the Second Lien Claimholders and the Third Lien Claim Holders will not be limited from exercising rights available to general unsecured creditors to object to such a proposed sale of Collateral. The Second Lien Claimholders and the Third Lien Claimholders will

	not object in such capacities to the right of the First Lien Claimholders to credit bid First Lien Obligations.
Adequate Protection:	Second Lien Claimholders and Third Lien Claimholders shall not contest any request by the First Lien Claimholders for adequate protection, postpetition interest or relief from the automatic stay. To the extent that adequate protection is requested by and granted to the First Lien Claimholders in the form of payment of postpetition interest as adequate protection, additional or replacement liens or superpriority claims, the Second Lien Claimholders and Third Lien Claimholders may also seek payment of postpetition interest as adequate protection, additional or replacement liens or superpriority claims; *provided* that (i) if the Second Lien Claimholders receive adequate protection in the form of additional or replacement liens or superpriority claims, such liens and claims will be subordinate to the liens and claims of the First Lien Claimholders, (ii) if the Third Lien Claimholders receive adequate protection in the form of additional or replacement liens or superpriority liens, such liens and claims will subordinate to the liens and claims of the First Lien Claimholders and the Second Lien Claimholders, (iii) the Second Lien Claimholders may seek the payment of postpetition interest as adequate protection subject to the First Lien Claimholders' right to object to the reasonableness of such payments and (iv) the Third Lien Claimholders may seek the payment of postpetition interest as adequate protection subject to the First Lien Claimholders' and the Second Lien Claimholders' right to object to the reasonableness of such payments.
Waiver of Claims:	Second Lien Claimholders and Third Lien Claimholders waive any right to assert or enforce any claim under section 506(c) or 552 of the Bankruptcy Code as against any First Lien Claimholders or any of the Collateral. Third Lien Claimholders waive any right to assert or enforce any claim under section 506(c) or 552 of the Bankruptcy Code as against any Second Lien Claimholders or any of the Collateral.
Plan Voting:	Second Lien Claimholders and Third Lien Claimholders shall have the right to vote any claim in any insolvency proceeding; provided, the Second Lien Claimholders and the Third Lien Claimholders in such capacities shall not vote in favor of any chapter 11 plan that is in violation of the Intercreditor Agreement.
OTHER PROVISIONS	
Purchase Rights:	None.

Amendment of Loan Documents:	The First Lien Claimholders have consent rights with respect to amendments to Second Lien Documentation that (i) are in violation of the Intercreditor Agreement, (ii) restrict the Borrowers' ability to make required payments with respect to the First Lien Obligations, or (iii) shortens the maturity or weighted average life to maturity of the Second Lien Obligations, require that any payment on the Second Lien Obligations be made earlier than originally scheduled or add or make more restrictive any mandatory payment, prepayment, redemption, repurchase, sinking fund or similar requirement except for periods beyond the latest maturity date under the First Lien Documentation. The First Lien Claimholders have consent rights with respect to amendments to Third Lien Documentation that (i) are in violation of the Intercreditor Agreement, (ii) restrict the Borrowers' ability to make required payments with respect to the First Lien Obligations, or (iii) shortens the maturity or weighted average life to maturity of the Third Lien Obligations, require that any payment on the Third Lien Obligations be made earlier than originally scheduled or add or make more restrictive any mandatory payment, prepayment, redemption, repurchase, sinking fund or similar requirement except for periods beyond the latest maturity date under the First Lien Documentation. The Second Lien Claimholders have consent rights with respect to amendments to First Lien Documentation that are in violation of the Intercreditor Agreement. The Third Lien Claimholders have consent rights with respect to amendments to First Lien Documentation and Second Lien Documentation that are in violation with the Intercreditor Agreement.

EXHIBIT 5

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

In re:	)	Chapter 11
ZACHRY HOLDINGS, INC., *et al.*[1]	)	Case No. 24-90377 (MI)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 2176**

DEBTORS' OBJECTION TO OMAHA PUBLIC POWER DISTRICT'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") file this objection (the "**Objection**") to *Omaha Public Power District's Application for Allowance of Administrative Expense Claim* [Docket No. 2176] (the "**Application**") and respectfully state as follows:

Preliminary Statement[2]

1. In 2021, ZII and OPPD, a Nebraska public electric utility, entered into the EPC Contract under which ZII undertook to engineer, procure, and construct two electric generating stations and associated substations, the Standing Bear Lake Station and the Turtle Creek Station. Following the Debtors' bankruptcy filing, ZII and OPPD amended the EPC Contract (for the second time) to, among other things, extend the Guaranteed Substantial Completion Dates and increase the liquidated damages contemplated by the contract. ZII subsequently assumed the EPC Contract, as amended. At the time of the assumption, the Projects were 92% complete, and as of

[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 otherwise defined in the Preliminary Statement shall have the meanings ascribed to such terms elsewhere in this Objection.

today, the Projects are approximately 99% complete and capable of generating electricity into the grid.

2. Shortly after ZII's assumption of the EPC Contract, ZII's ability to meet the Guaranteed Substantial Completion Dates was (and continues to be) significantly impeded by delays, thus far spanning over 80 days, caused by OPPD and third-party contractors that were hired by, and reported only to, OPPD. ZII sought to further modify the Guaranteed Substantial Completion Dates to account for the delays outside of ZII's control, as the parties have done twice previously and as expressly contemplated by Sections 2(b), 10, and 24 of the EPC Contract's General Conditions. ZII also sought an in-person meeting with OPPD to resolve the issues. OPPD refused. Instead, it began assessing liquidated damages against ZII. OPPD then filed the Application seeking allowance of those damages, which it asserts now total more than $38 million, as an administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code.

3. The Court should deny the Application for three reasons. First, the Application is premature. OPPD is seeking an administrative expense claim for damages for ZII's purported breach of the EPC Contract, but OPPD has yet to prove ZII's liability for the purported breach or the quantum of damages that could qualify as an administrative expense. Those issues are the subject of an adversary proceeding the Debtors filed against OPPD in this Court on February 5, 2025, and should be litigated there. Until then, the Court need not decide whether OPPD's asserted claim is a section 503(b)(1)(A) claim.

4. Second, OPPD has failed to prove that its claim is for "actual" and "necessary" costs and expenses that benefitted the estates. While ZII assumed the EPC Contract and acknowledged that it became a postpetition contract, the case law is clear that the mere assumption and the resulting postpetition nature of the EPC Contract do not automatically transform OPPD's

claim for purported breach into an administrative expense claim. OPPD must still meet its burden of proving a benefit to the estates, which it failed to do. Any potential benefits ZII hoped it would gain based on the facts known to it at the time were not real. In fact, OPPD's failure to meet its own obligations and revise the project schedule to account for the OPPD-caused delays ensured the estates would receive no benefit under the Second Amendment while OPPD enjoys the benefits of ZII's near-completion of the Projects. Allowing OPPD to recover a $38 million administrative expense claim would result in an impermissible windfall to OPPD. OPPD's request that the Court summarily allow it an administrative expense claim under section 503(b)(1)(A) for all damages—whether liquidated or actual, current or future—simply because ZII assumed the EPC Contract without showing a ***real*** and ***commensurate*** benefit to the estates is inappropriate.

5. Third, the more than $38 million in liquidated damages OPPD asserts are due are an unreasonable penalty under applicable Nebraska law and do not reflect OPPD's "necessary" costs under section 503(b)(1)(A). The liquidated damages provision was amended when ZII assumed the EPC Contract and when the two Projects were 92% complete. On information and belief, OPPD had already purchased, or obtained the right to purchase, supplemental power to cover its needs through the winter of 2024/2025 before the Second Amendment was executed. Regardless, it was not difficult for OPPD to ascertain and estimate its future economic damages at that time, as OPPD knew the average ongoing operational costs of the Projects and had access to market information and futures prices that would inform the approximate cost of supplemental replacement power, should it be needed. And, because the two power stations are anticipated to be operated as "regulating and peaking power" facilities, projected to operate only 15% of the time as needed based on peak customer demand, OPPD could have determined a reasonable estimate

of economic damages that would be caused by a delay in meeting the Guaranteed Substantial Completion Dates.

6. Based on the Debtors' preliminary assessment (without the benefit of discovery), the liquidated damages are more than five to ten times higher than market values for electrical power trading during the same time period and therefore grossly disproportionate to the harm purportedly caused by ZII's breach. Based on historical prices and projections, as well as a calculated marginal cost of production using daily natural gas prices and an assumed heat rate of the facilities being built, actual damages OPPD may have suffered, if any, are likely to be less than 10% of the asserted $38 million, even assuming no contribution to the delay by OPPD or its vendors.

7. The Court should deny the Application.

Background

A. ZII's Prepetition EPC Contract with OPPD and the Second Amendment

8. On September 21, 2021, Zachry Industrial, Inc. ("**ZII**") and Omaha Public Power District ("**OPPD**")[3] entered into an *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (as amended, the "**EPC Contract**") for ZII to engineer, procure, and construct two electric generating stations and associated substations, the Standing Bear Lake Station and the Turtle Creek Station (collectively, the "**Projects**"). The EPC Contract includes schedules for completing the Projects, scope of work,

[3] OPPD is a publicly owned electric utility and a political subdivision of the State of Nebraska. *Governance*, Omaha Public Power District, *available at* https://www.oppd.com/about/governance/ (last visited March 10, 2025). OPPD is managed by its president and chief executive officer, with oversight from an eight-member board of directors, elected by the people in the areas served. *Id.* As a publicly owned electric utility, OPPD's public power rates are based on the cost to provide service and are generally below the national average by 15.5% to 27.6%. *Quick Facts*, Omaha Public Power District, *available at* https://www.oppd.com/media/204897/quick-facts.pdf (last visited March 10, 2025).

certain deadlines, payments owed to ZII upon completion of performance, and remedies for OPPD upon non-performance by ZII. The EPC Contract is governed by Nebraska law.

9. The Projects are not meant to serve as the primary baseload sources of electricity for OPPD's customers. They are "peaking energy stations" or "peaker plants," essentially serving as back-up power sources when customer demand surges.[4] The Projects are not designed to run daily; rather, as OPPD announced publicly, the Standing Bear Lake Station and the Turtle Creek Station are to be used "only as needed," which OPPD estimated to be less than 15% of the time.[5]

10. The EPC Contract was first amended in October 2023, amending the Guaranteed Substantial Completion Dates ("**GSCDs**") for the Standing Bear Lake Station from May 1, 2023 to August 8, 2024 and the Turtle Creek Station from August 18, 2023 to August 30, 2024. The change to the GSCDs under the first amendment was a negotiated extension to account for OPPD-caused changes to the Projects causing over six months of delays.

11. The EPC Contract was amended for the second time in August 2024 (the "**Second Amendment**"). The parties again revised the GSCDs for the Standing Bear Lake Station and the Turtle Creek Station to December 30, 2024 and December 16, 2024, respectively, to accommodate additional project delays. The Second Amendment also provided for a new liquidated damages provision that would be applicable if the new GSCDs were not met. At the time of the Second

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[4] *See* EPC Contract, Ex. B, Sec. 1, at 4 ("The [Turtle Creek Station] is anticipated to be operated as a regulating and peaking power Facility, with the engines operating in a cyclic manner to support grid demands."); *id.*, at 6 (same with respect to the Standing Bear Lake Station); EPC Contract, Ex. B, Sec. 3, at 3 ("The anticipated dispatch of the Facilities will be as a regulating and peaking Facility, as such the number of starts and run times of the engines will be dependent on grid demands and highly variable.").

[5] *See Standing Bear Lake Station*, Omaha Public Power District, *available at* https://www.oppdcommunityconnect.com/standing-bear-lake-station (last visited March 10, 2025) ("Standing Bear Lake Station will be used to balance the energy load. The plant will run only as needed (estimated at less than 15% of the time) and will be available to support planned (maintenance) and unplanned (storms) outages . . . ."); *Turtle Creek Station*, Omaha Public Power District, *available at* https://www.oppdcommunityconnect.com/turtle-creek-station (last visited March 10, 2025) (same with respect to the Turtle Creek Station).

Amendment, both Projects were at least 92% complete.[6] Unlike in the original EPC Contract, which acknowledged that the liquidated damages provision reflected the parties' agreement "that actual damages incurred by [OPPD] as a result of [ZII's] failure to meet the Guaranteed Substantial Completion Dates and Performance Guarantees would be difficult to determine," and "that both parties agree that the liquidated damages provisions in this Article XI are reasonable and appropriate measures of the damages for such completion and performance shortfalls," the Second Amendment does not include this or similar language regarding liquidated damages.[7]

12. On September 17, 2024, ZII assumed the EPC Contract, as amended by the Second Amendment.[8]

B. ZII's Post-Assumption Performance Under the EPC Contract and Further OPPD-Caused Delays

13. Following the Second Amendment and assumption of the EPC Contract, ZII continued to perform in good faith under the EPC Contract towards meeting the GSCDs. ZII increased presence of its project leadership at both Projects and worked tirelessly to address any concerns OPPD had, which efforts OPPD's officials publicly recognized and commended.[9] But beginning in late October 2024—shortly after ZII assumed the contract— ZII was prevented from completing the work needed to achieve the GSCDs. These delays were caused, in significant part, by OPPD and third-party contractors, Siemens and Wartsila (collectively, the "**Third-Party**

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6 *See* OPPD's official statement in connection with its issuance of Electric System Revenue Bonds, 2024 Series A and Electric System Revenue Bonds, 2024 Series B, dated June 26, 2024, *available at* https://www.oppd.com/media/319956/official-statement-june-26-2024.pdf (last visited March 10, 2025), at 25.

7 *Compare* EPC Contract, Art. XI *with* Second Amendment ¶ 7.

8 *See Order (I) Approving Settlement by and Among the Debtors and Omaha Public Power District, (II) Authorizing the Debtors to Amend and Assume (as Amended) the Omaha Public Power District Contract, and (III) Granting Related Relief* [Docket No. 961].

9 *See* Omaha Public Power District, *October 15, 2024 Committee Meeting*, YouTube (Oct. 16, 2024), https://youtu.be/uYkGVHs4qdY?si=nIIirm1egYSChHBJ, at 3:28:40–3:32:56 (Sharyl McGuire, OPPD's Senior Director of Operations Support, stating that it is "exciting to see" that the Zachry team "has been very responsive" and was "executing on items that have been brought to their attention" and noting that she was "pleased to see how Zachry is showing up at the two sites and bringing in more support," including project leadership).

Contractors"), that OPPD hired to conduct testing and other work necessary to finish the Projects. Given that the Projects were nearing completion, commissioning work, which OPPD-controlled Third-Party Contractors directed, was "taking center stage."[10] This meant that any delays, non-performance, or errors of the Third-Party Contractors had an outsized effect on ZII's ability to continue, let alone complete, its work on the Projects—a fact well-known to OPPD. ZII worked with the Third-Party Contractors to establish micro schedules to ensure ZII and the Third-Party Contractors could perform their work efficiently. But the Third-Party Contractors substantially exceeded the projected timelines for conducting their work, had inadequate staff on hand to complete the work, made last minute changes to ZII's schedule, and took extensive and unplanned time off from November 2024 through early January 2025. ZII has also discovered that OPPD or someone acting at its direction added a cold fuel additive in the diesel fuel at the Turtle Creek Station, which has caused dramatic degradation of gasket materials resulting in further substantial delays.

14. To date, ZII has completed nearly 99% of the work needed to meet the GSCDs of both Projects and, by OPPD's Chief Financial Officer's assessment, the Projects "are all but now generating."[11] The Projects remain unfinished due, in large part, to the lengthy and ongoing delays caused by OPPD and its Third-Party Contractors. Despite ZII's diligent performance post-assumption, ZII was unable to meet the GSCDs for the Projects as contemplated under the Second Amendment.

15. ZII sought to modify the GSCDs, as the parties have previously done twice in similar circumstances and as expressly contemplated by the EPC Contract. Under Section 2(b) of

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[10] *Id.*

[11] Omaha Public Power District, *February 2025 OPPD Committee Meeting*, YouTube (Feb. 19, 2025), https://youtu.be/vNs5AQrfy38?si=Mikge_7ZfRsfYBPc&t=3892, at 1:04:38–1:04:55.

the EPC Contract's General Conditions, if ZII's work depends on the work and operations of OPPD or its Third-Party Contractors, then ZII can make a report to OPPD indicating how any Third-Party Contractor's conduct will impact ZII's ability to perform under the EPC Contract.[12] OPPD, in turn, ***shall*** then take reasonable steps "to correct or cause the separate contractor or [OPPD] to remedy the stated conditions" that will cause the impact, and ZII "may submit a claim for schedule relief . . . ."[13] Under Section 10 of the EPC Contract's General Conditions, if, while coordinating with Third-Party Contractors, ZII is impeded in its work, it "may be entitled to a Change Order for cost and schedule relief."[14] And under Section 24 of the EPC Contract's General Conditions, ZII is entitled to additional compensation or an extension of time "[i]n the event that [ZII], through no fault of its own, encounters delays or extra costs as a result of the total or partial suspension of the Work or unreasonable interference therewith by [OPPD] or its other contractors . . . ."[15]

16. OPPD was aware as far back as in October 2024—shortly after ZII assumed the EPC Contract—that, like with any other power plant going through commissioning, issues would come up and the GSCDs could "slip into" the first quarter of 2025, especially as it relates to the Turtle Creek Station which is "more complex to go through commissioning."[16] Despite knowing that commissioning could cause delays and notwithstanding the applicable provisions in the EPC Contract that account for delays, specifically delays caused by the Third-Party Contractors, and

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12 EPC Contract, General Conditions, § 2(b).

13 *Id.* (emphasis added).

14 *Id.*, § 10(b).

15 *Id.*, § 24.

16 *See* Omaha Public Power District, *October 15, 2024 Committee Meeting*, YouTube (Oct. 16, 2024), https://youtu.be/uYkGVHs4qdY?si=nIIirm1egYSChHBJ, at 3:32:15–3:32:55 (Sharyl McGuire, OPPD's Senior Director of Operations Support, stating that "with any plant going through commissioning, just like these sites, . . . issues are going to come up [and] the vendors are going to work through solutions as issues come up" and adding that as issues arise and as ZII and the Third-Party Contractors are laying out micro schedules, the substantial completion dates "might slip into the next year").

the parties' prior practice, OPPD was unwilling to cooperate and enter into a third amendment to the EPC Contract. Instead, on December 10, 2024, OPPD sent ZII a letter asserting anticipatory breach and threatening to exercise available remedies. On January 21, 2025, ZII responded, detailing all of the delays attributable to the Third-Party Contractors. ZII also repeatedly requested an in-person meeting to discuss OPPD's contentions and try to find common ground on a potential solution. But ZII's repeated requests for a meeting with OPPD were repeatedly rejected. And on January 30, 2025, OPPD sent ZII a letter rejecting its detailed request to amend the GSCDs based on OPPD-caused delays and asserting that the delays were caused by ZII. OPPD also issued ZII an invoice for liquidated damages.

C. The Debtors' Complaint Against OPPD and OPPD's Related Application for an Administrative Expense Claim

17. Because of delays through no fault of the Debtors, the Debtors commenced an adversary proceeding (the "**Adversary Proceeding**") on February 5, 2025 by filing a complaint against OPPD (the "**Complaint**") seeking an order declaring that: (i) the Debtors are not liable for failing to meet the applicable GSCDs resulting in a breach of the EPC Contract, as amended; (ii) the liquidated damages provisions are unenforceable as a penalty, regardless of the Debtors' alleged breach of the EPC Contract; and (iii) any administrative claim asserted by OPPD should be valued at $0 as of the effective date of the Debtors' chapter 11 plan or at such reduced amount that reflects the actual damages incurred by OPPD from delays solely caused by the Debtors [Adv. Pro. No. 25-03025, Docket No. 1]. The Adversary Proceeding remains pending before this Court, and OPPD has not yet answered or otherwise responded to the allegations set forth in the Complaint. The Debtors incorporate by reference all allegations set forth in the Complaint.

18. On February 14, 2025, OPPD filed its Application, requesting that the Court allow an administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code, with a

section 507(a)(2) priority, for any and all damages (whether liquidated, actual or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC Contract, as amended, occurring after the Debtors' chapter 11 petition date and prior to the effective date of the Debtors' chapter 11 plan.

Argument

I. The Application Is Premature Because OPPD Does Not Have a Liquidated Claim Against ZII

19. OPPD asserts that it has a breach of contract claim against ZII and that OPPD's damages stemming from that purported breach should be allowed as an administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code. But ZII's liability, if any, for breach of contract has yet to be determined, making the Application premature.

20. Before a court can award a claimant an administrative expense claim on account of an alleged breach of contract, the court must first determine whether the claimant: (i) established the debtor's liability for the asserted breach; and (ii) met its burden of proving damages on account of that breach. *See In re Henry Valencia, Inc.*, No. 20-10539-J11 (RHJ), 2023 WL 175198, at *9 (Bankr. D.N.M. Jan. 12, 2023) ("[B]efore the Court can award the [claimants] an administrative expense claim, the [c]ourt must determine the following: a) whether the [claimants] have established that [d]ebtor is liable to them for breach of the oral contract . . . , and b), if liability is established, whether the [claimants] have met their burden of proving any damages."); *see also In re Tristar Fire Prot., Inc.*, 466 B.R. 392, 404 (Bankr. E.D. Mich. 2012) (stating that in order for the court to consider whether a creditor is entitled to an administrative expense claim, it must first determine if the claim is enforceable against the debtor at all). In *Tristar*, for example, the court denied a claimant's request for allowance of an administrative expense claim because the debtor's liability to the claimant had not yet been adjudicated and the court, therefore, could not find that

the asserted claim was enforceable against the debtor. 466 B.R. at 404. Similarly, in *In re GGI Holdings, LLC*, on which OPPD relies, the court engaged in the section 503(b)(1)(A) analysis with respect to the claimant's breach of contract claim only after first determining that the debtor was liable on that claim. 665 B.R. 727, 752–80 (Bankr. N.D. Tex. 2024).

21. OPPD bears the burden to prove its allegations that ZII breached the EPC Contract and owes OPPD over $38 million in damages. *Henry Valencia, Inc.*, 2023 WL 175198, at *9. OPPD has not (and cannot) prove that ZII breached the EPC Contract or that OPPD has suffered damages that could qualify as an administrative expense. As OPPD itself acknowledged, those issues are the subject of the Debtors' Adversary Proceeding against OPPD that is currently pending before this Court. App. ¶ 23.[17] Unless and until the Court adjudicates ZII's liability for the purported breach of contract, determines the validity of the liquidated damages provision on which OPPD relies, and assesses the damages, if any, against ZII, the Court need not decide whether OPPD's asserted claim is a section 503(b)(1)(A) claim.

22. For that reason alone, the Court should deny the Application or, at the very least, hold it in abeyance pending the outcome of the Adversary Proceeding.

II. OPPD Has Failed to Demonstrate that Its Claim Is for Actual and Necessary Costs and Expenses that Benefitted the Debtors' Estates

23. Even if the Court can decide the Application before OPPD has proven that it has a claim for breach of contract, the Application should be denied because OPPD has not met its burden of showing that any alleged damages qualify as an administrative expense under section 503(b)(1)(A) of the Bankruptcy Code.[18]

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[17] Indeed, OPPD in its Application does not even attempt to argue the validity of its breach of contract claim or asserted damages, instead reserving its rights to do so in the Adversary Proceeding. App. ¶ 24.

[18] OPPD asserts that the Debtors in their Complaint explicitly acknowledged (although disputed) that any breaches under the Second Amendment would create an administrative expense priority claim in favor of OPPD. App. ¶ 32. Not so. While the Debtors recognized the ***possibility*** that the Court may hold that OPPD's asserted damages

a) Applicable Standard

24. Section 503(b)(1)(A) of the Bankruptcy Code provides for allowance as an administrative expense claim of claims for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). To qualify as an administrative expense claim under section 503(b)(1)(A), the claim must: "(1) arise[] from a transaction with the debtor-in-possession and (2) [be] beneficial to the debtor-in-possession in the operation of the business." *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI), 2014 WL 1047818, *3 (Bankr. S.D. Tex. Mar. 18, 2014) (quoting *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984)); *In re Whistler Energy II, L.L.C.*, 931 F.3d 432, 441 (5th Cir. 2019) (quoting *In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 387 (5th Cir. 2001)) ("[T]o qualify as an 'actual and necessary cost' under section 503(b)(1)(A), a claim against the estate must have arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate.").

25. Section 503(b) priorities "should be narrowly construed to maximize the value of the estate for all creditors." *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 299 (Bankr. S.D. Tex. 2020) (Isgur, J.) (quoting 4 Collier on Bankr. ¶ 503.06[2] (Richard Levin & Henry J. Sommers eds., 16th ed.)); *In re Juvennelliano*, 464 B.R. 651, 655 (Bankr. D. Del. 2011) ("[A]dministrative claims must be strictly construed based on the presumption that a debtor has limited resources to be distributed equally to creditors."); *see also Otte v. United States*, 419 U.S. 43, 53 (1974) (holding that there is an overriding concern to keep administrative expenses at a minimum).

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are entitled to administrative expense status, they never conceded that point. *See, e.g.*, Compl. ¶ 13 ("The Debtors dispute that any liquidated damages (and corresponding administrative claim, if any) are owed . . . ."). Moreover, as set forth in this Objection, the Court has an independent duty to "scrutinize" any request for allowance of an administrative expense claim.

26. As the party requesting allowance of an administrative expense claim, OPPD bears the burden of proof under section 503(b)(1)(A). *Whistler Energy II*, 931 F.3d at 441 ("The claimant seeking administrative expenses bears the burden of proof.").

b) OPPD Did Not and Cannot Meet Its Burden of Proving a Benefit to the Estates

27. OPPD effectively asks the Court to summarily allow it an administrative expense claim under section 503(b)(1)(A) for all damages—whether liquidated or actual, current or future—simply because ZII assumed the EPC Contract. App. ¶¶ 31, 33. This is contrary to section 503(b)(1)(A) and Fifth Circuit case law.

28. The mere assumption and the resulting postpetition nature of the EPC Contract do not automatically transform OPPD's claim for purported breach into an administrative expense claim. *See In re Johnston, Inc.*, 164 B.R. 551, 554 (Bankr. E.D. Tex. 1994) (rejecting the argument that a court's prior approval of the assumption of a lease means that any liabilities and expenses resulting from a subsequent rejection are *automatically* granted administrative expense priority under section 503(b)); *In re Michalek*, 393 B.R. 642, 644 (Bankr. E.D. Wis. 2008) ("I do not find support in the [Bankruptcy Code] for the proposition that a post-assumption breach automatically obligates the estate, or the plan, for damages from that breach. The timing necessarily makes those damages a post-petition obligation, but that is all."); *In re Juvennelliano*, 464 B.R. at 653 (noting that while section 365(g) of the Bankruptcy Code provides that a breach of an assumed executory contract "is treated as a post-petition breach, it does not explicitly provide that the resulting damages are entitled to administrative priority"); *see also In re Cook & Sons Mining, Inc.*, No. CIV.A. 05-19, 2005 WL 2386238, at *8 (E.D. Ky. Sept. 28, 2005) (stating that it is "clear that not *all* breaches of post-petition contracts" are afforded administrative priority); *In re Visi-Trak, Inc.*, 266 B.R. 372, 376 (Bankr. N.D. Ohio 2001) ("The language of [section] 503(b) does not, however,

support such a broad proposition that all breaches of post-petition contracts are to be afforded administrative priority."). Rather, the Court must scrutinize OPPD's claim for administrative expenses to determine if it meets the strictly construed requirements of section 503(b)(1)(A). *See In re DP Partners Ltd. P'ship*, 106 F.3d 667, 673 (5th Cir. 1997) (explaining that the bankruptcy court must "scrutinize claimed expenses . . . to ensure that expenses were indeed actual and necessary").

29. Consistent with the strict interpretation of section 503(b)(1)(A), courts generally allow as administrative expense claims ***only*** those claims that "benefit the estate and its creditors" and ***only*** to the extent of the provided benefit. *In re Transamerican Nat. Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992) ("The words 'actual' and 'necessary' have been construed narrowly: the debt must benefit the estate and its creditors.") (quoting *NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991)) (cleaned up); *Whistler Energy II*, 931 F.3d at 443 ("In addition to arising 'post-petition and as a result of actions taken by the' debtor-in-possession, the administrative expenses claimed must benefit the estate."); *see also In re Juvennelliano*, 464 B.R. at 656 (administrative status should be ascribed to "only those damages that provided a benefit to the estate"). The focus of the section 503(b)(1)(A) inquiry is "on the benefit to the bankruptcy estate and not the loss to the creditor." *In re Talen Energy Supply, LLC*, No. 22-90054 (MI), 2023 WL 2816683, at *5 (Bankr. S.D. Tex. Apr. 6, 2023); *see also In re Globe Metallurgical, Inc.*, 312 B.R. 34, 40 (Bankr. S.D.N.Y. 2004) ("The focal point of the allowance of a priority is to prevent unjust enrichment of the estate, not to compensate the creditor for its loss . . . . Thus, a court looks to the actual benefit to the estate and not the loss sustained by a creditor.") (internal citations omitted).

30. OPPD has not met its burden of establishing how its purported administrative expense claim is a benefit to the Debtors' estates. The Second Amendment, assumed by ZII, extended the deadlines by which to reach the GSCDs of the Projects. But those extensions were necessary based, in part, on OPPD-caused delays. It also retained liquidated damages in the event the deadlines were not reached even though the Projects were 92% complete at the time of the Second Amendment and actual damages were knowable, as discussed further below. OPPD further tripled and, for the Turtle Creek Station quadrupled,[19] liquidated damages owed in the event the deadlines were not reached, while stripping certain protections from ZII for delays caused by no fault of ZII.[20] Finally, though the Projects are 99% complete and only stalled because of delays caused by OPPD and OPPD-controlled Third-Party Contractors, OPPD rejected attempts to resolve the open issues before pursuing liquidated damages from ZII. Allowing OPPD to recover an administrative expense claim when it has already received the benefit of 99% completion of the Projects and while ZII is continuing to work in good faith to achieve substantial and final completion would result in a windfall to OPPD.[21] Courts have denied creditors' requests for allowance of an administrative expense claim under section 503(b)(1)(A) where the creditor, as

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[19] Such a substantial increase in liquidated damages for the Turtle Creek Station from ZII is particularly egregious considering that OPPD itself recognized that the Turtle Creek Station is "more complex to go through commissioning"—the work for which Siemens was primarily responsible and over whom ZII had no control. *See* para. 16, *supra*.

[20] That the Second Amendment provided the opportunity for ZII to receive additional consideration for timely completing the Projects under the Second Amendment is not sufficient to establish a benefit to the estate. *In re Worldcom, Inc.*, No. 02-13533 (AJG), 2003 WL 23966792 (Bankr. S.D.N.Y. Nov. 10, 2003) (quoting *In re Drexel Burnham Lambert Grp. Inc.*, 134 B.R. 482, 488 (Bankr. S.D.N.Y. 1991)) (stating that the inclusion of the words "actual" and "necessary" in section 503(b)(1)(A) requires that the estate receive a "real benefit from the transaction," not just a potential benefit). A claim "based on a mere potential to benefit the estate premised on contingency is not entitled to priority, because it is not an actual value received" for the benefit of the estate. *In re Kessler*, 23 B.R. 722, 724 (Bankr. S.D.N.Y. 1982), *aff'd*, 55 B.R. 735 (S.D.N.Y. 1985).

[21] An OPPD official acknowledged in August 2024, when the parties were negotiating the Second Amendment and assumption of the EPC Contract, that given that the Projects were "at the very end of completion," both parties had "a lot of incentive" to finish them, while noting that OPPD was "looking to protect [OPPD's] financial interests." Omaha Public Power District, *August 13, 2024 Committee Meeting*, YouTube (Aug. 14, 2024), https://youtu.be/E0eD6Da2aJM?si=tm8-6UU7RqYKj_z5, at 3:21:42–3:22:04.

here, acted primarily out of self-interest. *See, e.g.*, *Cook & Sons Mining*, 2005 WL 2386238, at *11-12 (holding that the bankruptcy court did not err when it considered the fact that "the benefit to the estate was only incidental to the creditor's actions, made primarily in the creditor's self interest," and denied a portion of the creditor's asserted administrative expense claim for the time when its contract to purchase goods from the debtor was unreasonable and no longer producing a benefit to the estate).

31. *GGI Holdings*, on which OPPD relies, is inapposite. There, the court granted a purchaser of the debtors' assets an administrative expense claim under section 503(b)(1)(A) on account of an adjudicated breach of the asset purchase agreement, finding that the estates received a substantial and concrete benefit in the form of the sale proceeds that were already used to make payments to creditors. 665 B.R. at 781. Moreover, the damages the purchaser was claiming as an administrative expense were not unreasonable liquidated damages but actual damages the purchaser suffered due to the debtors' breach. *Id.* at 758-59, 780-81. OPPD, on the other hand, provided nothing of value that would inure to the benefit of the Debtors' creditors. Instead, OPPD's punitive liquidated damages provision coupled with its refusal to account for OPPD and third-party delays ensured the estates would receive ***no*** benefit under the Second Amendment. Indeed, the liquidated damages provision OPPD relies on incentivizes delay rather than completion, as has become more clear by OPPD's lack of cooperation following execution of the Second Amendment.

32. OPPD cannot obtain the benefit of a priority administrative claim when it caused the delay in ZII's performance under the EPC Contract or the delay otherwise did not result from ZII's actions. For example, in *Whistler Energy II*, the Fifth Circuit held that a creditor was not entitled to administrative expenses for the cost of its presence on the debtor's platform for any

time attributable to its own unnecessary delay, as such delay neither resulted from actions by the debtor-in-possession nor otherwise benefitted the estate. 931 F.3d at 446. Moreover, Nebraska law provides that the owner's contribution to delays must be accounted for in an analysis of liquidated damages owed under a construction contract. *See Appeal of Roadmix Constr. Corp.*, 9 N.W.2d 741, 748 (Neb. 1943) ("[I]f a contractor agrees to do certain work within a specified time, and he is prevented from performing the contract by the act or default of the other party . . . the delay thus occasioned is excused, and the contractor may not be held liable, under a provision for liquidated damages or otherwise, for his noncompliance with the terms of the contract."); *see also Jobst v. Harden Bros.*, 121 N.W. 957, 960 (Neb. 1909) (reversing a district court's decision awarding damages under a construction contract and requiring the district court to deduct, with respect to any potential liquidated damages arising out of the contractor's alleged delay, "such delays as were properly chargeable to [the owner]'s action or failure to act, and that the judgment be modified if such findings render it necessary").

33. Following the Second Amendment and ZII's assumption of the EPC Contract, ZII continued performing under the EPC Contract in accordance with the EPC Contract schedule it had agreed to with OPPD. But as noted above and more fully set forth in the Debtors' Complaint, OPPD and the Third-Party Contractors on which substantial completion relies lack incentive to achieve the GSCDs.[22] Beginning in late October 2024—shortly after ZII assumed the EPC Contract—both OPPD and its Third-Party Contractors began imposing significant delays to the Projects schedule. The Third-Party Contractors, who were hired by and are directly responsible to OPPD, were hired to supply key equipment and components and to conduct (among other things) essential inspection, testing, and calibration work to commission that equipment, which

[22] The Third-Party Contractors are incentivized to delay completion to avoid warranty obligations while OPPD stands to obtain a windfall in liquidated damages.

must be completed before ZII can achieve substantial completion of the Projects. Those contractors substantially exceeded the projected timelines for conducting their work, had inadequate staff to complete work, made last minute changes to ZII's schedule, and took extensive and unplanned time off between November 2024 through early January 2025, halting completion of the Projects right as the GSCDs approached. ZII communicated the delays to OPPD and sought to modify the GSCDs based on these OPPD-caused delays, in accordance with Section 2(b), 10, and 24 of the EPC Contract's General Conditions and as the parties have done twice before. OPPD refused to acknowledge its contribution to delays, much less agreed to revise the completion schedules, despite knowing full well as far back as in October 2024 that delays were likely inevitable. Between both Projects, the OPPD-caused delays have resulted in no fewer than eighty (80) days of delays, through the beginning of February 2025, since the EPC Contract was assumed.

34. Because OPPD cannot prove benefit to the estates, OPPD's asserted breach of contract claim is not entitled to the administrative expense status under section 503(b)(1)(A).

III. The Liquidated Damages Are an Unreasonable Penalty Under Applicable State Law and Do Not Reflect OPPD's "Necessary" Costs Under Section 503(b)(1)(A) of the Bankruptcy Code

35. Even if the Court finds that ZII breached the EPC Contract (it did not) and that OPPD met its burden of proving benefit to the Debtors' estates (it did not), the liquidated damages OPPD asserts are punitive, excessive, and disproportionate to the harm purportedly caused by that breach and are not a reflection of "necessary" costs under section 503(b)(1)(A) of the Bankruptcy Code.

36. Under Nebraska law governing the EPC Contract, "[a] stipulated sum is for liquidated damages only (1) where the damages which the parties might reasonably anticipate are difficult to ascertain because of their indefiniteness or uncertainty and (2) where the amount stipulated either is a reasonable estimate of the damages which would probably be caused by a

breach or is reasonably proportionate to the damages which have actually been caused by the breach." *Berens & Tate, P.C. v. Iron Mountain Info. Mgmt., Inc.*, 747 N.W.2d 383, 387 (Neb. 2008). "[I]f the damages may be easily and readily ascertained, and if the amount stipulated is more than sufficient to compensate for the breach, it will be regarded as a penalty." *Kozlik v. Emelco, Inc.*, 483 N.W.2d 114, 121-22 (Neb. 1992) (quoting *Stanford Motor Co. v. Westman*, 39 N.W.2d 841, 846 (Neb. 1949)).

37. Nebraska courts have refused to enforce liquidated damages provisions in contracts where the stipulated damages amount was neither a reasonable estimate of the damages caused by a breach nor reasonably proportionate to the damages actually caused by the breach. For example, in *Computer Support Servs., Inc. v. Vaccination Servs. of Am., Inc.*, the Nebraska Court of Appeals agreed with the lower court that the asserted liquidated damages were unenforceable where the asserted liquidated damages were more than twice the amount of the actual damages and would result in a "windfall" to the party asserting them. No. A-16-460, 2017 WL 2399486, at *5 (Neb. Ct. App. May 23, 2017). In *Yant Construction Co. v. Village of Campbell*, the Nebraska Supreme Court held that the liquidated damages provision in a construction contract, which provided that the counterparty could withhold a fixed sum per month for each month the contractor delayed completing the work, was an unenforceable penalty. 243 N.W. 77, 80 (Neb. 1932). The court based its holding on the fact that "[t]here [was] no evidence in the record to show what damage, if any, the defendant sustained by reason of the mere delay in completing the work within the time specified." *Id.* at 79. And in *Browning Ferris Indus. v. Eating Establishment-90th & Fort, Inc.*, the Nebraska Court of Appeals, relying on, *inter alia*, *Yant Construction*, held that the liquidated damages provision imposed a penalty rather than liquidated damages because the actual damages were not "overly difficult to ascertain with some precision" and there was "no real relationship"

between the actual damages and the asserted liquidated damages. 575 N.W.2d 885, 890 (Neb. Ct. App. 1998).

38. The liquidated damages provision in the EPC Contract, as amended by the Second Amendment, is unenforceable under Nebraska law. The damages OPPD could suffer from ZII's breach of the EPC Contract were not difficult to ascertain at the time of the Second Amendment and ZII's assumption of the EPC Contract. At that time, the Projects were 92% complete, and any potential damages caused by delay were knowable to OPPD and capable of being reasonably estimated. For example, OPPD could determine the average ongoing operational costs of the Projects once completed under an assumed natural gas price based on their own procurement or futures prices. And, because the power stations are anticipated to be operated as "regulating and peaking power" facilities meant only to serve as "back up" and operating only 15% of the time, as needed, and not as the primary baseload source of electricity for OPPD's customers, any damage caused by a delay in meeting the GSCDs was easily discernible from the amount OPPD actually spends as an alternative to using the plants in the event of a shortfall in supply versus demand. In fact, the Debtors believe that OPPD had already contracted for supplemental power to cover the possibility that the completion deadlines would not be met well before the Second Amendment was executed. In addition, by November 2024 for the Turtle Creek Station and December 2024 for the Standing Bear Lake Station—before the GSCDs for the Projects—both Stations were already operational and capable of generating electricity into the grid.

39. The asserted liquidated damages were not remotely close to a reasonable estimate of the damages that could be caused by ZII's breach, nor are they reasonably proportionate to any actual damages suffered by OPPD. The liquidated damages provision in the Second Amendment establishes damages of ***nearly $1 million per day*** comprising damages in the amount of:

(i) $350,000/day through January 29, 2025, and $500,000/day until the work is accepted as complete (with a "sub-cap" of 10% of the contract price and total cap of 15%) for the Standing Bear Lake Station; and (ii) $250,000/day through January 15, 2025 and $400,000/day until the work is accepted as complete (with a "sub-cap" of 10% of the contract price and total cap of 15%) for the Turtle Creek Station.[23] There is no apparent relationship between those liquidated damages amounts and the actual damages OPPD could suffer, particularly given the "peaking power" nature of the two Projects which, by OPPD's own estimation of the Projects' operating profile, would operate only up to 15% of the time.[24]

40. The assessed liquidated damages are grossly disproportionate to any actual damages OPPD purportedly suffered. Based on the Debtors' preliminary assessment (without the benefit of discovery), the damages rate implied by the liquidated damage provisions is at least ***five to ten times higher*** than what the market would have valued the net revenues associated with the output of the two Projects during the same time period. The "market values" relied upon by the Debtors are likely higher than the costs incurred by OPPD given its membership in the Southwest Power Pool, which provides for shared power exchanges among its members.[25] The wholesale cost of electrical power is available to members like OPPD on a real-time basis.[26] Based on the

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[23] Second Amendment § 7.

[24] *See* EPC Contract, Ex. B, Sec. 3, at 3 (providing that the Standing Bear Lake Station is estimated to operate up to 1,300 hours per year and the Turtle Creek Station up to 350 hours, with estimated annual capacity factors of 15%).

[25] OPPD is a member of the Southwest Power Pool (SPP). *What is the SPP?*, Omaha Public Power District, *available at* https://www.oppd.com/media/268570/spp-101-infographic.pdf (last visited March 10, 2025). The SPP is "a regional transmission organization (RTO): a nonprofit corporation mandated by the Federal Energy Regulatory Commission to ensure reliable supplies of power, adequate transmission infrastructure and competitive wholesale electricity prices on behalf of its members." *About Us*, Southwest Power Pool, *available at* https://www.spp.org/about-us/ (last visited March 10, 2025). As a member, "OPPD can sell its wholesale power to other SPP members using the Integrated Marketplace." *What is the SPP?*, Omaha Public Power District, *available at* https://www.oppd.com/media/268570/spp-101-infographic.pdf (last visited March 10, 2025).

[26] The SPP publishes publicly available integrated marketplace data on its website (https://portal.spp.org/groups/integrated-marketplace), providing historical and look-ahead data for the SPP integrated wholesale electrical marketplace. OPPD would also have access to other market information and prices at which futures are trading and settled through its trading and hedging functions.

historical prices of wholesale electricity during the period when the Projects could have been operated, a calculated marginal cost of production using daily natural gas prices, and an assumed heat rate of the project generator technologies, the actual damages OPPD may have suffered, if any, are likely to be less than 10% of the asserted $38 million for the mid-December 2024 through mid-February 2025 period, making the liquidated damages provision an unenforceable penalty. *See Computer Support*, 2017 WL 2399486, at *5 (holding that a liquidated damages provision was unenforceable where the liquidated damages were more than twice the amount of the actual damages).

41. Aside from being unenforceable under Nebraska law, the liquidated damages are also not "necessary" under section 503(b)(1)(A) of the Bankruptcy Code. Courts have held that under section 503(b)(1)(A) of the Bankruptcy Code, "a cost or expense cannot be characterized as 'necessary' unless it is reasonable when compared to the benefit realized by the bankruptcy estate." *In re Canton Jubilee, Inc.*, 253 B.R. 770, 775 (Bankr. E.D. Tex. 2000) (emphasis added). It is, therefore, "axiomatic that unreasonable expenses, while they might be actual, would never be necessary." *Id.* (quoting *In re Express One Intern., Inc.*, 217 B.R. 207, 211 (Bankr. E.D. Tex. 1998)); *see also Cook & Sons Mining*, 2005 WL 2386238, at *12 (holding that the bankruptcy court correctly considered the extent to which the contract price became unreasonable in denying in part a request for an administrative expense claim under section 503(b)(1)(A)).

42. The asserted liquidated damages are grossly disproportionate to the actual damages OPPD may have suffered and, therefore, cannot be "necessary" under section 503(b)(1)(A) of the Bankruptcy Code for the same reason they are unenforceable under Nebraska law. Allowing OPPD to recover tens of millions in liquidated damages when it enjoys the benefit of ZII's near completion of the Projects and when its actual damages, if any, are the proximate result of its own

delays and are just a fraction of the liquidated damages set forth in the Second Amendment would be inequitable and would result in a significant windfall to OPPD. Those liquidated damages cannot be "necessary" under section 503(b)(1)(A). *See In re CM Holdings, Inc.*, 264 B.R. 141, 149 (Bankr. D. Del. 2000) ("Claims arising under [section] 503(b)(1)(A) are equitable in nature and thus are valued by the amount of postpetition benefit the claimant provides to the estate and not necessarily according to the contract terms underlying the claim.").[27]

43. To the extent the Court does not deny the Application for the reasons set forth above, the Court should decline to enforce the liquidated damages provision and hold that OPPD's claim is entitled to the administrative expense status ***solely*** to the extent of the actual damages it suffered as a result of a breach, if any, of the EPC Contract attributable ***solely*** to ZII's actions.

Reservation of Rights

44. The Debtors reserve the right to: (i) amend, modify, or supplement this Objection, (ii) file an objection to any claim asserted by OPPD on any basis, and (iii) pursue claims and causes of action against OPPD, including claims and causes of action asserted in the Adversary Proceeding, or any other person or entity and seek appropriate remedies in connection with same. The Debtors further reserve all their rights and remedies in connection with the Adversary Proceeding.

45. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any

[27] The fact that the Court previously approved the Second Amendment that amended the liquidated damages provision and ZII's assumption of the EPC Contract does not change the analysis. In *Astria Health v. Cerner Corp. (In re Astria Health)*, the court held that a court's approval of a contract assumption in the "summary proceeding" under section 365 of the Bankruptcy Court "does not dispose" of the fundamental questions related to the parties' contractual and other state-law rights, such as the validity or legality of the contract or the enforceability of its particular provisions, but "leaves all existing rights intact for full plenary litigation on the merits." 640 B.R. 758, 768 (Bankr. E.D. Wash. 2022). The court added that "[w]hatever limitations applicable nonbankruptcy law may place on the enforceability or validity of particular aspects of an agreement are themselves *part of the agreement*." *Id.* at 769.

claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (h) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance of property of the Debtors' estates; or (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) are valid and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

Conclusion

46. For the foregoing reasons, the Debtors respectfully request that the Court deny the Application and grant the Debtors such other and further relief as the Court deems just and proper.

[*Remainder of Page Intentionally Left Blank*]

Dated: March 10, 2025
Houston, Texas

/s/ Charles R. Koster

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Counsel to the Debtors and
Debtors in Possession

Certificate of Service

I certify that on March 10, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

EXHIBIT 6

United States Bankruptcy Court
Southern District of Texas
ENTERED
April 01, 2025
Nathan Ochsner, Clerk

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

In re:	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	Case No. 24-90377 (MI)
Debtors.	(Jointly Administered) **Re: Docket No. 2176**
ZACHRY HOLDINGS, INC.,	
Plaintiff,	Adv. Pro. No. 25-03025 (MI)
v.	
OMAHA PUBLIC POWER DISTRICT,	
Defendant.	

STIPULATION AND AGREED ORDER
REGARDING OMAHA PUBLIC POWER DISTRICT'S
APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE
CLAIM AND THE DEBTORS' RELATED ADVERSARY PROCEEDING

This stipulation and agreed order (this "**Stipulation and Agreed Order**") is made by and among Omaha Public Power District ("**OPPD**") and Zachry Industrial, Inc. ("**ZII**") and its affiliated debtors and debtors in possession (together with ZII, the "**Debtors**"; the Debtors together with OPPD, the "**Parties**," and each a "**Party**").[2] The Parties hereby stipulate and agree as follows:

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at https://www.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 herein but not otherwise defined shall have the meanings ascribed to such terms in the *Omaha Public Power District's Application for Allowance of Administrative Expense Claim* [Docket No. 2176] (the "**Application**").

WHEREAS, on September 21, 2021, ZII and OPPD entered into an *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (as amended, the "**EPC Contract**") for ZII to engineer, procure, and construct two electric generating stations and associated substations, the Standing Bear Lake Station and the Turtle Creek Station (collectively, the "**Projects**"); and

WHEREAS, the EPC Contract included certain Guaranteed Substantial Completion Dates ("**GSCDs**") for the Projects; and

WHEREAS, on May 21, 2024, the Debtors commenced their chapter 11 cases (the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"); and

WHEREAS, in August 2024, ZII and OPPD amended the EPC Contract to, among other things, extend, for the second time, the GSCDs for the Standing Bear Lake Station to December 30, 2024, and for the Turtle Creek Station to December 16, 2024 (the "**Second Amendment**"); and

WHEREAS, on September 17, 2024, the Court entered the *Order (I) Approving Settlement by and Among the Debtors and Omaha Public Power District, (II) Authorizing the Debtors to Amend and Assume (as Amended) the Omaha Public Power District Contract, and (III) Granting Related Relief* [Docket No. 961], authorizing ZII to assume the EPC Contract, as amended by the Second Amendment; and

WHEREAS, following the assumption of the EPC Contract, a dispute arose between the Parties regarding the cause for the delays in achieving the GSCDs and the Parties' remedies related thereto; and

WHEREAS, on February 5, 2025, the Debtors commenced an adversary proceeding (the "**Litigation**") by filing a complaint against OPPD seeking an order declaring that: (i) the Debtors are not liable for failing to meet the applicable GSCDs resulting in a breach of the EPC Contract; (ii) the liquidated damages provisions contained in the EPC Contract, as amended by the Second Amendment, are unenforceable as a penalty, regardless of the Debtors' alleged breach of the EPC Contract; and (iii) any administrative claim asserted by OPPD on account of the Debtors' purported breach of the EPC Contract should be valued at $0 as of the effective date of the Debtors' chapter 11 plan or at such reduced amount that reflects the actual damages incurred by OPPD from delays in meeting the GSCDs solely caused by the Debtors; and

WHEREAS, on February 14, 2025, OPPD filed the Application requesting that the Court allow it an administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code, with priority status under section 507(a)(2) of the Bankruptcy Code, for any and all damages (whether liquidated, actual, or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC Contract occurring after the Debtors' chapter 11 petition date and prior to the effective date of the Debtors' chapter 11 plan; and

WHEREAS, on February 27, 2025, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Debtors' Disclosure Statement on a Final Basis and (II) Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates* [Docket No. 2431], which confirmed the *Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates* [Docket No. 2362] (the "**Plan**"); and

WHEREAS, on March 10, 2025, the Debtors filed their *Objection to Omaha Public Power District's Application for Allowance of Administrative Expense Claim* [Docket No. 2500]

asserting, among other things, that the Application was premature because ZII's liability, if any, for breach of the EPC Contract is the subject of the Litigation and has yet to be determined; and

WHEREAS, the Parties agree that the issues of the Debtors' purported liability to OPPD underlying OPPD's Application are the subject of the Debtors' Litigation and should be determined in the Litigation, subject to all available motions, defenses, and claims of the Parties; and

WHEREAS, the Parties have reached an agreement with respect to the Application and have agreed that the Application shall be abated as set forth in this Stipulation and Agreed Order.

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

1. The Application shall be deemed abated until such time as the Debtors' liability, if any, to OPPD in connection with the EPC Contract is determined on a final basis in the Litigation, whether by settlement, judgment, order, or otherwise.

2. To the extent it is determined on a final basis in the Litigation, whether by settlement, judgment, order, or otherwise, that the Debtors have no liability to OPPD in connection with the EPC Contract, the Application shall automatically be deemed denied in its entirety without the need for any further action by the Court or any of the Parties.

3. To the extent it is determined on a final basis in the Litigation, whether by settlement, judgment, order, or otherwise, that the Debtors have any net liquidated, non-contingent monetary liability to OPPD in connection with the EPC Contract, the contested matter proceeding in respect of the Application shall resume in the Chapter 11 Cases before the Court for the sole purpose of determining whether such liability shall be treated under the Debtors' confirmed Plan as an administrative expense claim under section 503(b) of the Bankruptcy Code. Until the Court makes such a determination on a final basis, OPPD shall not be deemed to hold an administrative

expense claim in the Chapter 11 Cases against any of the Debtors, and the Debtors shall not be required to set aside funds or take any other measures in connection with the Plan or otherwise in response to OPPD's purported administrative expense claim.

4. For the avoidance of doubt, nothing contained in this Stipulation and Agreed Order shall prejudice the Debtors' right to object to any request by OPPD for allowance of an administrative expense claim, regardless of whether such request is based on the allegations set forth in the Application or otherwise.

5. The Debtors' discovery requests to OPPD in connection with the Application shall be deemed withdrawn without prejudice to the Debtors' ability to serve the same or similar discovery requests, in addition to any other discovery requests as may be appropriate, in the Litigation or otherwise.

6. The Debtors' third-party subpoenas issued to Wartsila North America, Inc. and Siemens Energy, Inc. in the Litigation shall be deemed withdrawn without prejudice to the Debtors' ability to serve the same or similar subpoenas, in addition to any other discovery requests as may be appropriate, at the appropriate time in the Litigation, but not sooner than the entry of a scheduling order in the Litigation.

7. The Litigation is immediately permitted to proceed in all respects, and the Parties' rights regarding all matters with respect to the Litigation are preserved.

8. Unless the Parties agree or the Court orders otherwise, the Litigation shall be governed by all applicable rules of procedure, including (without limitation) the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure (to the extent made applicable by the Federal Rules of Bankruptcy Procedure).

9. This Stipulation and Agreed Order is subject to the approval of the Court and shall be of no force and effect unless it is approved by the Court.

10. This Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Court.

11. Each Party represents and warrants that it is duly authorized to enter into and be bound by this Stipulation and Agreed Order. Each of the undersigned counsel that executes this Stipulation and Agreed Order by or on behalf of each respective Party represents and warrants that such undersigned counsel has been duly authorized and empowered to execute and deliver this Stipulation and Agreed Order on behalf of such Party.

12. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

13. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified, altered, amended, or vacated without the prior written consent of all Parties hereto or by order of the Court.

14. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Agreed Order.

Signed: April 01, 2025

Marvin Isgur
United States Bankruptcy Judge

STIPULATED AND AGREED THIS 27TH DAY OF MARCH, 2025:

/s/ Charles R. Koster

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Debtors in Possession

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sajones@foley.com
zzahn@foley.com

Counsel to Omaha Public Power District

Certificate of Service

I certify that on March 27, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

EXHIBIT 7

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

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

NOTICE OF (I) ENTRY OF ORDER APPROVING THE DEBTORS' DISCLOSURE STATEMENT ON A FINAL BASIS AND CONFIRMING THE FURTHER MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ZACHRY HOLDINGS, INC. AND ITS DEBTOR AFFILIATES AND (II) OCCURRENCE OF THE EFFECTIVE DATE

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February 27, 2025, the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Debtors' Disclosure Statement on a Final Basis and (II) Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2431] (the "**Confirmation Order**"), confirming the *Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 2362] (as modified, amended, or supplemented from time to time in accordance with its terms, the "**Plan**") and approving, on a final basis, the Disclosure Statement [Docket No. 1986] of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**" or the "**Reorganized Debtors**").[2]

Pursuant to the Confirmation Order, the Reorganized Debtors are required to file this *Notice of (I) Entry of Order Approving the Debtors' Disclosure Statement on a Final Basis and Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates and (II) Occurrence of the Effective Date* no later than seven (7) Business Days after the Effective Date.

The Effective Date of the Plan occurred on April 10, 2025. All conditions in **Article IX.A** of the Plan have been satisfied or waived pursuant to **Article IX.B** of the Plan. As set forth in

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Reorganized Debtors in the Chapter 11 Cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Reorganized Debtors' Claims and Noticing agent at www.veritaglobal.net/ZHI. The location of the Reorganized Debtors' service address in the Chapter 11 Cases is: P.O. Box 240130, San Antonio, Texas 78224.

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

Article IX.C of the Plan, substantial consummation of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

Pursuant to the Confirmation Order, the Bankruptcy Court has approved the settlement, discharge, release, injunction, and exculpation provisions in the Plan, including in **Article VIII** of the Plan, which are now in full force and effect.

Pursuant to **Article V.B** of the Plan, unless otherwise provided by a Final Order of the Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan or the Rejection List, if any, must be filed with the Claims and Noticing Agent at the address set forth below and served on the Reorganized Debtors on or before **May 12, 2025** (*i.e.*, 30 days after the Effective Date). **Any Proofs of Claim arising from the rejection of an Executory Contract or Unexpired Lease not timely Filed with the Claims and Noticing Agent shall be automatically Disallowed without further order of the Court, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, or their property, without the need for any objection by the Debtors or Reorganized Debtors, or further notice to, action, order, or approval of the Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, and be subject to the permanent injunction set forth in Article VIII.F of the Plan, notwithstanding anything in a Proof of Claim to the contrary**. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified and treated in accordance with **Article III** of the Plan. Further, pursuant to **Article V** of the Plan, the Reorganized Debtors reserve the right to alter, amend, modify, or supplement the Rejection List upon notice to the affected counterparty, including the right to add any Executory Contract or Unexpired Lease to the Rejection List if any cure dispute is not resolved in a manner acceptable to the Debtors or Reorganized Debtors in their sole discretion.

The Debtors or the Reorganized Debtors, as applicable, shall pay Cure Claims in the amounts set forth on the Assumption List on the Effective Date or as soon as reasonably practicable thereafter. Pursuant to **Article V.C** of the Plan, all requests for payments of Cure Claims that differ from the amounts paid or proposed to be paid by the Reorganized Debtors to a counterparty must be filed with the Court and served on the Reorganized Debtors on or before **May 12, 2025** (*i.e.*, 30 days after the Effective Date). **Any such request that is not timely filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Court**.

All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than **May 27, 2025** (*i.e.*, 45 days after the Effective Date). The Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Court. The Reorganized Debtors shall pay Professional Fee Claims in Cash in the amount the Court allows.

The Plan, the Confirmation Order, the Plan Supplement, and their provisions are binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all current and former Holders of Claims, all current and former Holders of Interests, and all other parties-in-interest and their respective heirs, successors, and assigns, executors, administrators, Affiliates, officers, directors, managers, agents, representatives, attorneys, beneficiaries, or guardians, whether or not the Claim or Interest of such Holder is Impaired under the Plan, and whether or not such Holder voted to accept the Plan.

Copies of the Confirmation Order, the Plan, the Plan Supplement, and all documents filed in the Reorganized Debtors' Chapter 11 Cases, are available, free of charge by: (a) accessing the Reorganized Debtors' restructuring website at https://www.veritaglobal.net/zhi; (b) contacting Kurtzman Carson Consultants, LLC dba Verita Global (the claims, noticing, and solicitation agent retained in these Chapter 11 Cases by Court order) at (866) 479-8211 (U.S. or Canada) or +1 (781) 575-2037 (International); or (c) submitting an inquiry via https://www.veritaglobal.net/ZHI/inquiry. You may also obtain copies of any pleadings filed in these Chapter 11 Cases for a fee via PACER at https://www.txsb.uscourts.gov.

The Plan and Confirmation Order contain other provisions that may affect your rights. You are encouraged to review the Plan and Confirmation Order in their entirety.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CONTACT VERITA GLOBAL BY CALLING (866) 479-8211 (U.S. OR CANADA) OR +1 (781) 575-2037 (INTERNATIONAL), OR SUBMITTING AN INQUIRY VIA WWW.VERITAGLOBAL.NET/ZHI/INQUIRY.

[Remainder of Page Intentionally Left Blank]

Dated: April 10, 2025
Houston, Texas

/s/ Charles R. Koster

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fhe@whitecase.com
adam.swingle@whitecase.com

Counsel to the Reorganized Debtors

Certificate of Service

I certify that on April 10, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

EXHIBIT 8

DocuSign Envelope ID: 4E75191D-9E52-4DC5-A010-04BC179382A0

FOR EXECUTION

ENGINEER, PROCURE, AND CONSTRUCT CONTRACT FOR OMAHA PUBLIC POWER DISTRICT STANDING BEAR LAKE AND TURTLE CREEK GENERATING STATIONS

CONTRACT NO. 263406

September 21, 2021

EXHIBIT

A

ARTICLE XI - LIQUIDATED DAMAGES.

(a) The Contractor and the District acknowledge that actual damages incurred by the District as a result of the Contractor's failure to meet the Guaranteed Substantial Completion Dates and Performance Guarantees would be difficult to determine and that both parties agree that the liquidated damages provisions in this Article XI are reasonable and appropriate measures of the damages for such completion and performance shortfalls, and are not a penalty. Total liquidated damages in the aggregate for both sites shall not exceed Fifteen percent (15%) of the Contract Price.

(b) On or before March 31, 2023, EPC Contractor, OFE Suppliers and OPPD shall meet and confer regarding the status of Acceptance Tests and progress toward meeting the Guaranteed Substantial Completion Date(s), and EPC Contractor and Suppliers shall commit in writing that the Work will be completed by the Guaranteed Substantial Completion Date(s). Failure to meet the Guaranteed Substantial Completion Date(s) shall be subject to the provisions of subsection (c)(1) below. Such provisions shall be the sole and exclusive remedy for any such failure.

(c) Contractor's failure to meet the Guaranteed Substantial Completion Date(s) and/or Performance Guarantees shall result in the following liquidated damages; provided, however, if the Work is delayed by the District or other contractors, Contractor shall nevertheless continue to perform the Work in accordance with the Project Schedule, however Contractor may be entitled to a Change Order if price and schedule are impacted. Acceptance by the District of ongoing monthly liquidated damage payment shall in no event constitute a waiver of the District's right to future liquidated damage payments or operate as an accord and satisfaction of the District's right to future liquidated damage payments or in any other manner prejudice the District's right to future liquidated damage payments. The District's damages arising from claims or causes other than failure to achieve the Guaranteed Substantial Completion Date(s) and/or Performance Guarantees shall be limited only by Section 33 (Limitation of Liability) of the General Conditions.

(1) Delay in Completion of Work

(i) If the Contractor fails to complete the Work on or before the Guaranteed Substantial Completion Date, for SBLS, as a predetermined reasonable and sole and exclusive remedy for such delay, the Contractor shall be subject to liquidated damages as follows: For each calendar day beyond the Guaranteed Substantial Completion Date for SBLS that the Work is not completed, $125,000 per calendar day through May 15, 2023, and $250,000 per calendar day, from May 16, 2023, until the Work is accepted as complete. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price.

(ii) If the Contractor fails to complete the Work on or before the Guaranteed Substantial Completion Date, for TCS, as a predetermined reasonable and sole and exclusive remedy for such delay, the Contractor shall be subject to liquidated damages as follows: For each calendar day

beyond the Guaranteed Substantial Completion Date for TCS that the Work is not completed, $50,000 per calendar day, through September 1, 2023, and $100,000 per calendar day, from September 2, 2023, until the Work is accepted as complete. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price.

(2) Performance Guarantees. The Contractor shall have reasonable access to the Sites as mutually agreed between the parties, to implement corrective action in order to demonstrate Performance Guarantees. Any release of retainage will be in accordance with Article IV, Section (b). With respect to Performance Guarantees, should the District and the Contractor agree that any remedy is impractical, uneconomic or inexpedient, or should Contractor not make any such remedy, or should Contractor still fail to satisfy such Performance Guarantees following all attempts to remedy, it is agreed that the District's loss would be difficult to determine. Accordingly, after successful completion of all of the tests and retests specified, the District and Contractor agree that, as a predetermined reasonable and sole and exclusive remedy for any such loss, Contractor will pay to the District, as liquidated damages and not as a penalty, the liquidated damages, if any, determined in accordance with the following provisions.

If the Contractor cannot demonstrate conformance with the Thermal Performance Guarantees by passing the Acceptance Tests on or before the Guaranteed Substantial Completion Date, for either or both SBLS or TCS, the Contractor shall pay daily liquidated damages as follows:

Thermal Performance Guarantee	Liquidated Damages
Balance of Plant Auxiliary Power – Natural Gas – SBLS	One Thousand Five Hundred Dollars ($1,500) for each kW (or prorated fraction thereof) by which the auxiliary power is greater than the guaranteed value.
Balance of Plant Auxiliary Power – Fuel Oil – SBLS	One Thousand Five Hundred Dollars ($1,500) for each kW (or prorated fraction thereof) by which the auxiliary power is greater than the guaranteed value.
Balance of Plant Auxiliary Power – Natural Gas – TCS	One Thousand Five Hundred Dollars ($1,500) for each kW (or prorated fraction thereof) by which the auxiliary power is greater than the guaranteed value.
Balance of Plant Auxiliary Power – Fuel Oil – TCS	One Thousand Five Hundred Dollars ($1,500) for each kW (or prorated fraction thereof) by which the auxiliary power is greater than the guaranteed value.

(d) Liquidated damages shall be paid to the District by the Contractor at the end of each month in which any liquidated damages accrue, or the District may, at its option, offset any accrued liquidated damages against amounts due and payable to the Contractor under the Contract Documents.

(e) Specific Performance. It is hereby agreed by the District and Contractor that the Work to be performed under the Contract Documents is unique in nature. Consequently, except as to breaches for which a remedy is specified in the Agreement, if Contractor breaches the Contract Documents, the District shall have the right to require specific performance at the District's option. Such option by the District shall not limit the District's right to any and all damages recoverable under the Agreement.

EXHIBIT 9



2023 GENERATION ADDITION

ENGINEER, PROCURE, CONSTRUCT

EXHIBIT B - TECHNICAL SPECIFICATION

EXHIBIT
B

OMAHA PUBLIC POWER DISTRICT
2023 GENERATION ADDITION

ENGINEER, PROCURE, CONSTRUCT
EXHIBIT B – TECHNICAL SPECIFICATION

OPPD Contract No.:	263406
Document No.:	10214444-ZP-M0102
Issue:	For Contract
Revision:	1

Prepared By

HDR

SECTION 01 – OVERVIEW

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1 OVERVIEW

1.1 INTRODUCTION

Owner: Omaha Public Power District – OPPD

The Owner's project consists of two power plant Sites. The northern Site, hereafter referred to as the "Standing Bear Lake Station" (SBLS), will use reciprocating internal combustion engine (RICE) generator sets as the generation technology; the southern Site, hereafter referred to as the "Turtle Creek Station" (TCS), will use combustion turbine generators as the generation technology.

Further description of the two project Sites follows.

1.2 STANDING BEAR LAKE SITE

Facility Name: Standing Bear Lake Station

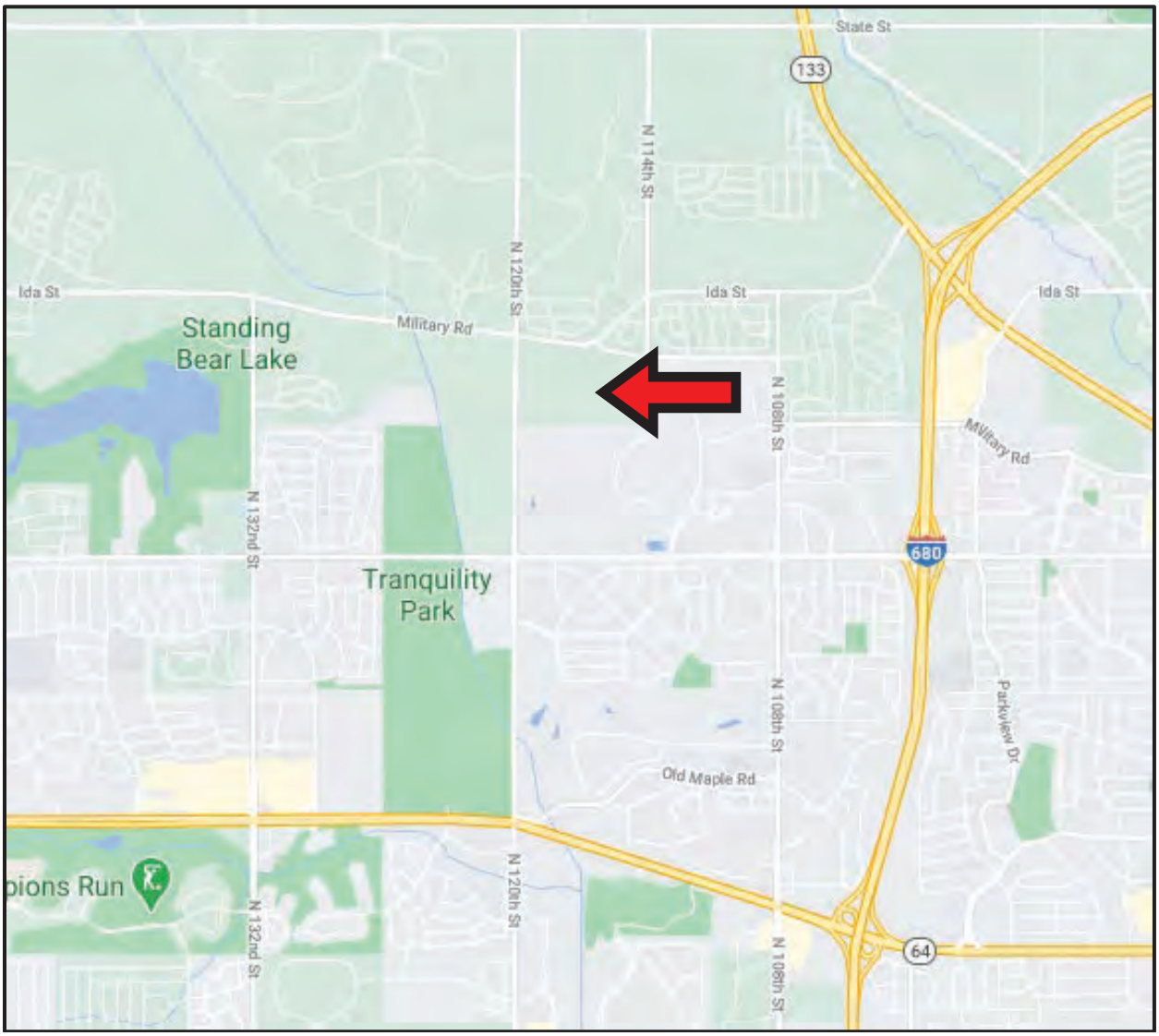
Project Location: State of Nebraska, County of Douglas, NW Omaha

Project Address: Military Rd Omaha, NE 68164

Approximate GPS: 41.315741, -96.094803

The Facility is located southeast of the intersection of Military Road and North 120th Street. Interstate 680 exit 5 (Fort Street) is the closest highway access point.

The Site location is indicated on the map below and a satellite view of the Site is shown in the aerial map that follows.





The Facility will be in a suburban area in northwest Omaha, on a primarily greenfield site. The Site is co-located on a Metropolitan Utilities District site. The Facility will consist of nine RICE generator sets installed inside an engine hall exhausting outdoors to emission reduction catalysts, exhaust silencers, and exhaust stacks.

Primary fuel for the engines will be pipeline quality natural gas, with backup fuel being ultra-low sulfur diesel. The engines will be capable of blending hydrogen into the natural gas in the future when hydrogen fuel becomes available.

Power from the Facility will be directed to a substation located on the site that also serves as a power delivery substation for the area.

The Facility is anticipated to be operated as a regulating and peaking power Facility, with the engines operating in a cyclic manner to support grid demands.

Refer to the preliminary site plan located in Appendix 10.

1.3 TURTLE CREEK SITE

Facility Name: Turtle Creek Station

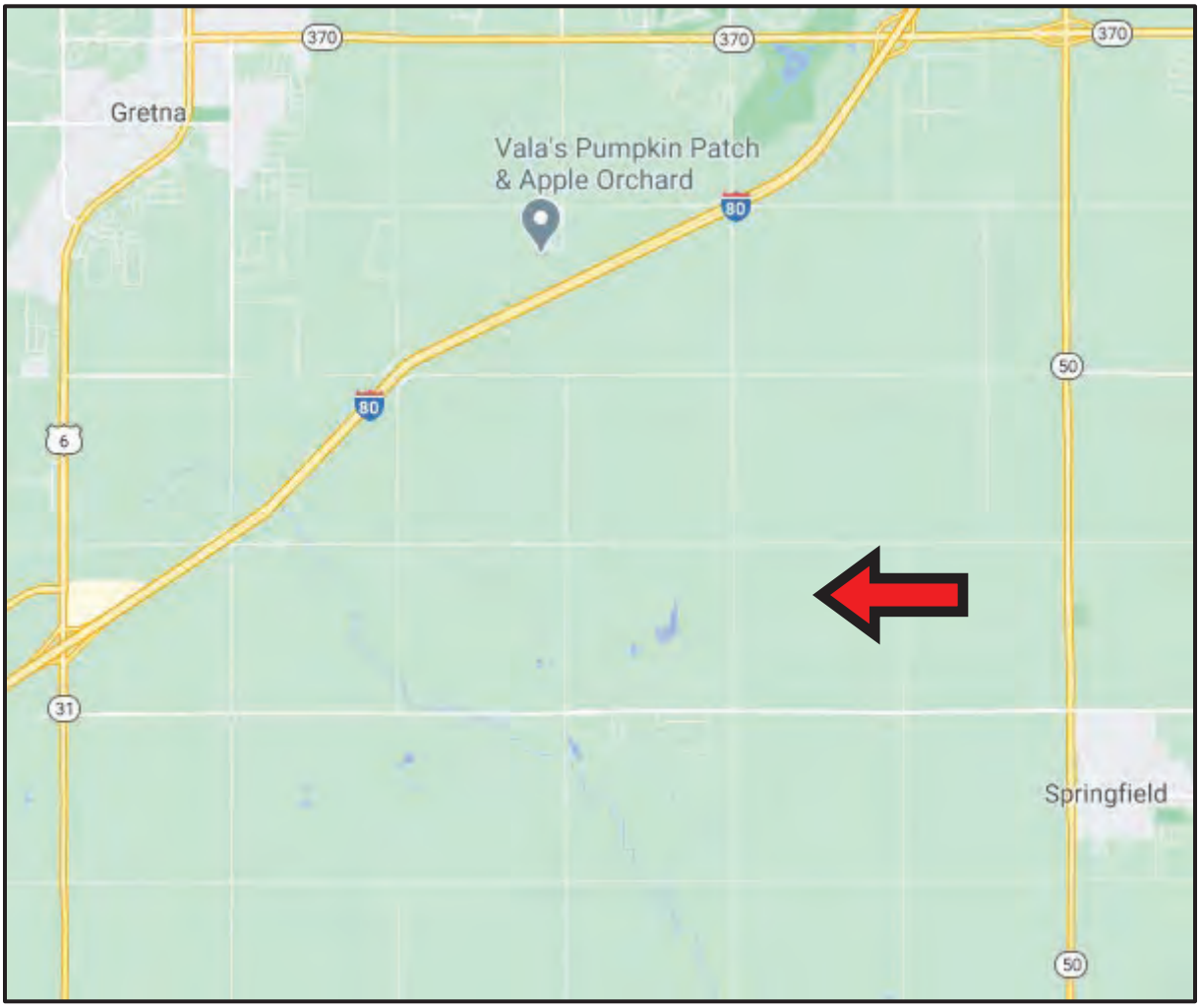
Project Location: State of Nebraska, County of Sarpy

Project Address: 14601 South 168th Street, Gretna, NE 68028

Approximate GPS: 41.095489, -96.170071

The Facility is located southeast of the intersection of Fairview Road and S 168th Street. Interstate 80 exit 432 (NE-31 or S216th Street) is a nearby Interstate highway access point.

The Site location is indicated on the map below and a satellite view of the Site is shown in the aerial map that follows.





The Facility is in a rural area approximately 15 miles southwest of downtown Omaha on agricultural land and adjacent to the Sarpy County landfill. The Facility will consist of two combustion turbine generator sets installed outdoors and exhausting to emission reduction modules.

Primary fuel for the CTG's will be pipeline quality natural gas, with backup fuel being ultra-low sulfur diesel. The CTG's should be capable of blending hydrogen into the natural gas in the future when hydrogen fuel becomes available.

Power from the Facility will be directed to a substation located on the site.

The Facility is anticipated to be operated as a regulating and peaking power Facility, with the CTG's operating in a cyclic manner to support grid demands.

Refer to the preliminary site plan located in Appendix 10.

EXHIBIT 10

EXHIBIT E

GUARANTEED COMPLETION DATES AND PROJECT SCHEDULES

GUARANTEED SUBSTANTIAL COMPLETION DATES

Standing Bear Lake Station Guaranteed Substantial Completion Date	May 1, 2023
Turtle Creek Station Guaranteed Substantial Completion Date	August 18, 2023

EXHIBIT

C

EXHIBIT 11

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CHANGE ORDER NO. 1

Date: November 9, 2023

Project: Omaha Public Power District-Turtle Creek Station/Standing Bear Lake Station (the "Project")

Parties: Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska ("OPPD" or "District") and Zachry Industrial, Inc. ("Contractor") (together, the "Parties").

Contract: Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations, Dated September 21, 2021 (OPPD Contract No. 263406) (the "EPC Contract").

This Change Order No. 1 ("Change Order") amends the EPC Contract and is entered into between OPPD and Contractor effective November 9, 2023 (the "Change Order Effective Date").

WHEREAS, the EPC Contract defines the terms "Contract Change Request (CCR)" and "Change Order" and those definitions shall apply to this Change Order;

WHEREAS all other capitalized terms used in this Change Order shall have the meaning set forth in the EPC Contract, unless otherwise stated herein;

WHEREAS, Contractor has submitted CCRs and supporting information, OPPD has considered the CCRs and supporting information, and OPPD issues this Change Order;

WHEREAS, for purposes of this Change Order, the Parties shall refer to the subject CCRs described herein and set forth on Exhibit "A" hereto as "Potential Change Notices" ("PCNs"); and

WHEREAS, the Parties entered into a Memorandum of Agreement on October 11, 2023, setting forth their agreement regarding certain PCNs ("MOA"); and

WHEREAS, contemporaneously with the execution of this Change Order, OPPD and Contractor have executed Amendment No. 1 to the EPC Contract, which, among other terms and consistent with the MOA, sets forth Revised Guaranteed Substantial Completion Dates for Standing Bear Lake Station ("SBLS") of August 8, 2024, and for Turtle Creek Station ("TCS") of August 30, 2024.

NOW THEREFORE, in consideration of the foregoing recitals (which are incorporated herein by this reference) and the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties further agree as follows:

1. **Defined Terms.** Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the EPC Contract.

2. **Change Order and Amount.**

EXHIBIT
D

Exhibit “A” sets forth the PCNs that are the subject of this Change Order. The Parties agree to the amounts set forth on Exhibit "A" as satisfaction for such PCNs and accept the cancellation of those PCNs described to be canceled. Payment for the PCNs identified with Invoice Month of November 2023 shall be paid Net 10 days from receipt of invoice. Payment for the PCNs identified with any other Invoice Month set forth on Exhibit "A" shall be paid in accordance with the EPC Contract. Withholding of retainage will be pursuant to the terms of the EPC Contract.

3. **ProlecGE Transformers**

As set forth in the MOA, OPPD agrees to accept the derated ProlecGE transformers for TCS. All other performance obligations relating to the GSU Transformers referenced in the EPC Contract shall remain in full force and effect. In exchange for OPPD’s acceptance of the derated transformers, Contractor will credit OPPD $3,902,000. The credit shall be applied against the amount invoiced by Contractor for PCNs identified with Invoice Month of November 2023.

4. **Siemens Commissioning Schedule.**

Siemens Energy (“Siemens”) has supplied Owner Furnished Equipment (“OFE”) to TCS under a separate contract with OPPD. Upon successful completion of commissioning at TCS, OPPD agrees to provide, and Contractor agrees to accept, the lump sum payment of $2,250,000, to cover an additional thirty-six (36) days in connection with Contractor’s Work for an expanded Siemens’ OFE commissioning schedule. Contractor shall remain responsible for commissioning of TCS and SBLS in accordance with the terms of the EPC Contract.

5. **Soil Compaction.**

As set forth in the MOA, based on Contractor's third-party geotechnical report, OPPD accepts any site erosion, settlement, foundation movements, and other impacts that occur after the two (2) year EPC Contract Warranty (beginning with Substantial Completion).

6. **Low Voltage Switch Gear at SBLS.**

As set forth in the MOA, all issues related to the Low Voltage Switchgear are the sole responsibility of Contractor.

7. **Change to Contract Price.**

The Contract Price is as detailed below:

The original Contract Price was: $366,207,836.00.

The Contract Price shall be increased by this Change Order in the amount of $64,185,282 for the accepted PCNs detailed on Exhibit “A.”

Additionally, the Contract Price shall be decreased in the amount of $3,902,000 to reflect the credit referenced in Section 3 above.

Additionally, the Contract Price shall be increased for the Siemens Commissioning Schedule work described in Section 4 of this Change Order in the amount of $2,250,000.

The adjusted Contract Price, including the price of this Change Order, is: $428,741,118.00.

8. **Effect of Change Order**.

Contractor agrees to perform the above-described Work in accordance with the above terms and in compliance with the Contract Documents. The adjustment in the Contract Price set out in this Change Order (and the adjustment in the Guaranteed Substantial Completion Dates made in Amendment No. 1) shall constitute the entire compensation and/or adjustment in the Contract Price and contract time due Contractor arising out of the changes for the Work covered by this Change Order. Contractor forever waives, relinquishes, releases, and discharges OPPD from any and all present or future claim of any kind for additional compensation or payment, whether known or unknown, or which may arise in the future, of or relating to Contractor's alleged "cumulative impact" claim initially set forth in its letter to OPPD dated May 12, 2023, whether such claim is described as a "cumulative impact" claim or by any other description or name, and whether such claim is asserted under the terms of the EPC Contract or of any other agreement or legal document, or pursuant to any statute or legal or equitable theory, doctrine, rule, or common law principle. No additions or deletions to this Change Order shall be allowed, except with written permission of the District.

9. **Miscellaneous.**

Except as specifically modified in this Change Order, the terms of the EPC Contract shall remain unchanged and in full force and effect. This Change Order may be executed in separate counterparts, and delivered via email, which shall be sufficient to bind the parties to the terms and conditions of this Change Order.

IN WITNESS WHEREOF, the Parties have caused this Change Order No. 1 to be executed by their duly authorized representatives as of the date set forth above.

OMAHA PUBLIC POWER DISTRICT

By: DocuSigned by: 80AC33D8E87A4D3...

Title: Contract Specialist

ZACHRY INDUSTRIAL, INC.

By: DocuSigned by: Ralph Biediger 4E061F33D33B4DA...

Title: President, Projects Group

EXHIBIT 12

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408 & ALL SIMILAR PROTECTIONS

AMENDMENT NO. 2 TO
ENGINEER, PROCURE, AND CONSTRUCT CONTRACT FOR OMAHA PUBLIC POWER DISTRICT STANDING BEAR LAKE AND TURTLE CREEK GENERATING STATIONS (CONTRACT NO. 263406)

This AMENDMENT NO. 2 to Contract No. 263406 ("**Amendment No. 2**") is entered into as of this 13 day of August ("**Effective Date**"), by and between Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska ("**OPPD**"), and Zachry Industrial, Inc., a Texas corporation ("**Contractor**") (together with OPPD, the "**Parties**" or individually, a "**Party**").

WHEREAS, OPPD and Contractor are parties to that certain *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated 21 of September, 2021 (the "EPC Contract");

WHEREAS, pursuant to Article IV, Subsection (b) of the EPC Contract, OPPD withholds five percent (5%) of each Milestone Payment owed to Contractor as retainage and as of the Effective Date, OPPD is holding approximately [$20,220,446] in retainage (the "**Retainage**");

WHEREAS, Contractor and certain of its affiliates (collectively, the "**Debtors**") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas ("**Bankruptcy Court**") on May 21, 2024 (the "**Petition Date**"), which initiated the chapter 11 cases (the "**Chapter 11 Cases**") now jointly administered under lead case number 24-90377 (MI); and

WHEREAS, OPPD and Contractor desire to amend the EPC Contract as described herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties agree as follows:

1. Defined Terms. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the EPC Contract.

2. Amendment of Article IV – Contract Price, Payment. Article IV, Subsection (b) of the EPC Contract is hereby deleted in its entirety and replaced in its entirety with the following:

(b) Milestone Payments. Contractor shall submit an invoice, on the tenth (10th) day of each month, showing milestones completed and payments due for those milestones in accordance with the Milestone Payment Schedule set forth in Exhibit G. After review and approval of the invoice by OPPD, milestone payments shall be made to the Contractor in the amount of 100% of approved invoice, without withholding of retainage. Such payment shall be made approximately fifteen (15) days from receipt of the invoice. Payment of such

EXHIBIT
E

monthly milestone payments by the District shall not be construed or deemed to be an acceptance of the Work covered thereby.

3. Amendment of Article IV – Contract Price, Payment. Article IV of the EPC Contract is hereby amended to add the following Section (i):

(i) Contractor warrants and agrees that it has the necessary work force and resources to complete the Work, including achieving the Guaranteed Substantial Completion Dates. In an effort to expedite completion of the Work, and provided that Contractor shall assume the EPC Contract (as amended) as specified in Section 10 hereof and recommend approval of this Amendment by the Bankruptcy Court of the Southern District of Texas, the District shall remit certain "Milestone Final Completion" payments to the Contractor. These Milestone Final Completion payments are contingent on the Contractor meeting the lesser of ninety days (90) from Substantial Completion or the dates for the respective Sites listed in subsections (a) and (b) below. Failure of Contractor to meet the scheduled dates below for each individual site will result in Contractor forfeiting the additional Two Million Dollar ($2,000,000.00) payment for the respective Site set forth in this Amendment No. 2. Subject to the terms of the EPC Contract, including this Amendment No. 2, the Milestone Final Completion payments shall be adjusted as follows:

On Final Completion, the Milestone Final Completion payment shall increase by Two Million Dollars ($2,000,000.00) per site from the allotted amount set forth in the EPC Contract:

(a) SBLS will be a payment of Three Million Dollars ($3,000,000.00) if the current schedule date of March 30, 2025 is met.

(b) TCS will be a payment of Three Million Dollars ($3,000,000.00) if the current schedule date of March 16, 2025 is met.

4. Amendment of Article IV – Contract Price, Payment. Article IV of the EPC Contract is hereby amended to add Section (j), as set forth below:

(j) Release of Retainage. The following procedures shall apply to the release of the Retainage:

(i) SurTec Information Systems, Inc. shall serve as Contractor's designated third-party administrator (the "**Agent**");
(ii) Contractor shall direct Agent to establish an escrow account (the "**OPPD Escrow Account**");
(iii) Upon execution of this Amendment No. 2, OPPD shall promptly deposit the entirety of the Retainage into the OPPD Escrow Account; and
(iv) The Agent shall directly pay Subcontractors, associated with the funds held in the OPPD Escrow Account; *provided that*, OPPD shall receive

contemporaneous notice of all payments made from the OPPD Escrow Account.

5. Amendment of Article XI – Liquidated Damages. Article XI Section (f) of Amendment No. 1 to the EPC Contract is hereby deleted in its entirety, such that Article XI, Section (f) now provides in its entirety, the following:

(f) Payments for Early Completion. Provided that Zachry has successfully completed commissioning requirements per the EPC Contract, as determined by OPPD, Zachry shall be entitled to receive the following payments, to be paid within fifteen (15) days of receipt of an invoice:

(1) For SBLS, $193,548.00 per day for each calendar day before the Guaranteed Substantial Completion Date that the Work is completed. There shall be an overall cap on this compensation of $5,999,988, reflecting up to 31 calendar days.

(2) For TCS, $352,941.00 per day for each calendar day before the Guaranteed Substantial Completion Date that the Work is completed. There shall be an overall cap on this compensation of $5,999,997, reflecting up to 17 calendar days.

6. Amendment of Article XI – Liquidated Damages. Article XI, Section (b) of Amendment No. 1 to the EPC Contract, is hereby deleted in its entirety, such that Article XI, Section (b) of the Agreement now provides, in its entirety, the following:

(b) On or before August 31, 2024, EPC Contractor, OFE Suppliers and OPPD shall meet and confer regarding the status of Acceptance Tests and progress toward meeting the Guaranteed Substantial Completion Date(s), and EPC Contractor and Suppliers shall commit in writing that the Work will be completed by the Guaranteed Substantial Completion Date(s). Failure to meet the Guaranteed Substantial Completion Date(s) shall be subject to the provisions of subsection (c)(1) below. Such provisions shall be the sole and exclusive remedy for any such failure.

7. Amendment of Article XI – Liquidated Damages. Article XI, Section (c), Subsection (1) (i) and (ii) of the EPC Contract is hereby deleted in its entirety, such that Article XI, Section (c), Subsection (1) (i) and (ii) of the EPC Contract now provides, in its entirety, the following:

(1) Delay in Completion of Work

(i) If the Contractor fails to complete the Work on or before the Guaranteed Substantial Completion Date, for SBLS, as a predetermined reasonable and sole and exclusive remedy for such delay, the Contractor shall be subject to liquidated damages as follows: For each calendar day beyond the Guaranteed

Substantial Completion Date for SBLS that the Work is not completed, $350,000 per calendar day through January 29, 2025, and $500,000 per calendar day until the Work is accepted as complete. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price. If Substantial Completion has not been achieved by February 28, 2025, then on March 1, 2025, Contractor shall pay the remainder of such maximum liquidated damages applicable to SBLS.

(ii) If the Contractor fails to complete the Work on or before the Guaranteed Substantial Completion Date, for TCS, as a predetermined reasonable and sole and exclusive remedy for such delay, the Contractor shall be subject to liquidated damages as follows: For each calendar day beyond the Guaranteed Substantial Completion Date for TCS that the Work is not completed, $250,000 per calendar day, through January 15, 2025, and $400,000 per calendar day until the Work is accepted as complete. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price. If Substantial Completion has not been achieved by February 14, 2025, then on February 15, 2025, Contractor shall pay the remainder of such maximum liquidated damages applicable to TCS.

8. Revised Schedule. The Guaranteed Substantial Completion Date for SBLS shall be December 30, 2024, and the Guaranteed Substantial Completion Date for the TCS will now be December 16, 2024.

9. Waiver. Upon execution of this Amendment No. 2 and approval of the Bankruptcy Court, all OPPD's current and future Owner Furnished Equipment (OFE) backcharges will be waived and dismissed and all of Contractor's current and future Potential Change Notices (PCN's) will be waived and dismissed.

10. Assumption. Contractor shall seek Court approval to assume the Agreement (as amended by this Amendment) pursuant to Section 365 of the Bankruptcy Code. The Parties agree that all requirements for assumption of this Agreement (as amended by this Amendment) under section 365(b)(1) of the Bankruptcy Code shall be satisfied upon the Parties' entry into this Amendment No. 2. Contractor acknowledges and agrees that it shall continue to perform all obligations under the EPC Contract (as amended by Amendment No. 1 and Amendment No. 2), including achieving Substantial Completion of the SBLS and the TCS as specified in Section 8 of this Amendment No. 2.

11. Bankruptcy Court Approval and Effectiveness. This Amendment No. 2 shall be effective only upon entry of an order by the Bankruptcy Court of the Southern District of Texas approving Contractor's assumption of the EPC Contract (as amended) pursuant to section 365 of the Bankruptcy Code. Upon entry of such order by the Bankruptcy Court of the Southern District of Texas, Sections 6 and 7 of this Amendment shall take effect retroactively to the date of execution of this Amendment.

12. Effect of Amendment. Except as provided in Amendment No. 1 and this Amendment No. 2, all other terms and conditions of the EPC Contract shall remain the same and in full force and effect.

13. Counterparts. This Amendment may be executed and delivered by facsimile or other electronic means and upon such delivery the facsimile or electronic signature will be deemed to have the same effect as if the original signature had been delivered to the other Party. This Amendment may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives as of the date set forth above.

OMAHA PUBLIC POWER DISTRICT

By: _____

Title: _____

Date: _____

ZACHRY INDUSTRIAL, INC.

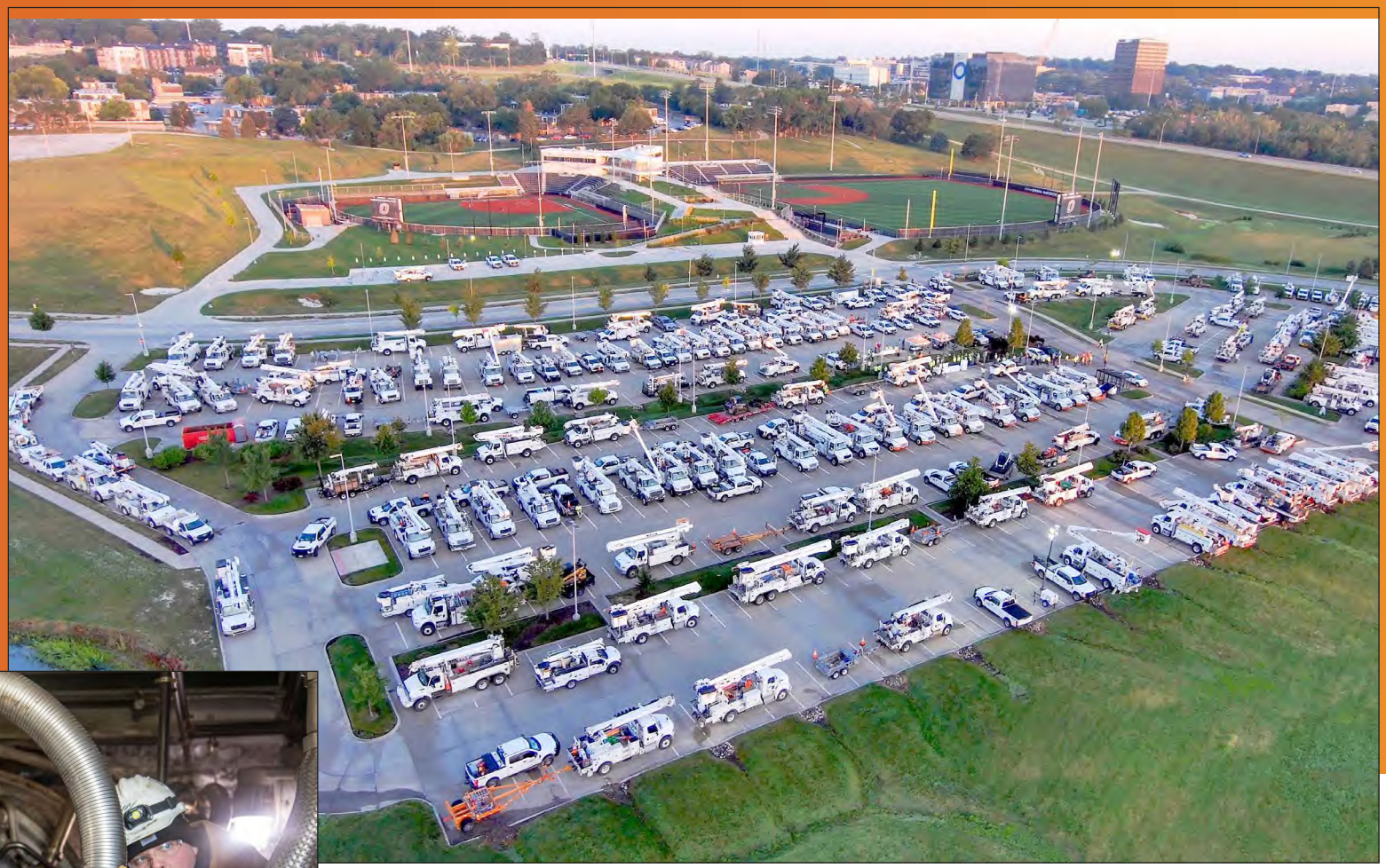
By: _____

Title: President, EPC

Date: 8/14/2024

EXHIBIT 13

2025 CORPORATE OPERATING PLAN





EXHIBIT

F

OPPD

Omaha Public Power District

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

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MANAGEMENT LETTER

Management Letter



Every day in 2024, Omaha Public Power District (OPPD) worked tirelessly to overcome challenges and prepare for a bright future.

We diversified our portfolio with energy sources that will enhance our reliability during extreme weather, reduce our carbon output and help us meet fast-growing customer demand for electricity.

We're forging ahead with plans for advanced metering infrastructure (AMI) technology, which will help us assess and restore outages with greater speed and precision.

We also powered through major challenges this year, including extreme cold and low river levels in January that affected generation plants on the Missouri River, an April tornado that devastated Elkhorn and Bennington, major flooding near our Fort Calhoun Station site and a July 31 storm with hurricane-force winds that caused the biggest outage in OPPD history.

Above all, our public power mission kept us focused on reliability, affordability and environmental sustainability. Our locally elected Board of Directors continued to guide us with forward-looking directives to serve the community.

Our 2025 Corporate Operating Plan recommends a 6.3% rate increase, composed of a 4.9% average general rate increase and a 1.4% increase from the Fuel and Purchased Power Adjustment (FPPA) factor and replenishment of the Rate Stabilization Account (RSA). The general rate increase is driven by rising net power costs from increasing load and a growing capital portfolio, leading to additional debt issuances. The FPPA and RSA impact is driven by outages and storm restoration costs. FPPA is the mechanism OPPD uses to collect price fluctuations from year to year.

For context, OPPD's rates are still far lower, on average, than other utilities. Residential rates are 25.2% below the national average, according to the U.S. Energy Information Administration's final 2023 report, the most recent data available.

As the energy landscape changes, OPPD is working on multiple fronts to adapt and thrive – and our future is bright.



L. Javier Fernandez
President and Chief Executive Officer



STRATEGIC PLANNING AND ENTERPRISE RISK



Strategic Direction

To provide clear and transparent direction on behalf of OPPD's customer owners OPPD's publicly elected Board of Directors established fifteen strategic direction (SD) policies in 2015 to which OPPD is accountable. The policies guide OPPD's planning efforts to address current and future trends, mitigate risks, pursue strategic opportunities, and prioritize resources to efficiently and effectively provide energy services to our customer owners. The SD policies leverage industry benchmarks to drive performance as a top utility and provide the basis for a scorecard to which the organization manages its performance. The Board monitors OPPD's compliance with these policies and updates the policies, when determined appropriate, to clarify strategic direction.

Our Strategic Foundation (SD-1)

Mission: To provide affordable, reliable and environmentally sensitive energy services to our customers.

Vision: "Leading the Way We Power the Future"

In implementing this vision, OPPD shall adhere to these principles:

- Strengthen the public power advantage of affordable and reliable electricity;
- Exemplify fiscal, social and environmental responsibility to optimize value to our customer-owners;
- Proactively engage and communicate with our stakeholders;
- Act transparently and with accountability for the best interest of our customer-owners;
- Collaborate, when appropriate, with partners; and
- Leverage OPPD's leadership to achieve these goals

Core Values

- We have a PASSION to serve
- We HONOR our community
- We CARE about each other

Board Strategic Direction Policies & Strategic Goals

Policy	Measure	Definition	Strategic Goal
Rates (SD-2)	% Below Regional Retail Average	Retail rate target of North Central Regional average published rates on a system average basis.	10%
Access to Credit Markets (SD-3)	Debt Coverage Ratio	Revenues less expenses divided by total annual senior and subordinate lien debt interest and principal payments.	2.0
Reliability (SD-4)	SAIDI	System Average Interruption Duration Index	< 90 mins
	SAIFI	System Average interruption Frequency Index	< 0.9 incidents
	EFOR	Equivalent Forced Outage Rate	< or = 8.0%
Customer Satisfaction (SD-5)	Absolute Satisfaction Score	Customer satisfaction for similar-sized utilities in the region across residential and business customers.	Top quartile
Safety (SD-6)	DART	Days Away, Restricted or Transferred	< or = 0.50
	PVIR	Preventable Vehicle Incident Rate	< or = 4.00
Environmental Stewardship (SD-7)	% Net reduction in CO2e	Strive to achieve net zero carbon equivalent (CO2e) emissions by 2050 relative to OPPD's 2013 benchmark with the following interim targets, 2027-41-51% net reduction. Future interim targets to be informed by and determined following the completion of the 2026 integrated resource plan.	Achieve net zero CO2e by 2050
Employee Relations (SD-8)	Employee Engagement	Composite score of employee engagement	Top quartile

For a full listing of the 15 Strategic Directives, which includes Integrated System Planning (SD-9), Ethics (SD-10), Economic Development (SD-11), Information Management & Security (SD-12), Stakeholder Outreach & Engagement (SD-13), Retirement Plan Funding (SD-14), Enterprise Risk Management (SD-15), please access the following link to the OPPD Board Policy document https://www.oppd.com/media/317205/oppd-board-policy-binder.pdf

Powering the Future to 2050



At OPPD, we've imagined the future. Powering the Future to 2050 (PF2050) is a strategic vision to make OPPD cleaner, more sustainable, and more innovative than you can believe. While others have been wondering about what's next, we've been hard at work, nights and weekends, planning out what the future of power looks like and how to bring it to life. The vision is clear – **Perfect Power**, **Customer Freedom**, and a **Cleaner World** enabled through a **Digitally Driven**, **Purpose-Driven Culture**, and **Future-Ready Posture** mindset.

In November of 2019, the Board of Directors revised SD-7 (Environmental Stewardship) and established the goal to conduct all operations in a manner that strives for the goal of net-zero-carbon production by 2050. In consideration of this revision, other SD policies, and transformational changes within and outside the industry, the Executive Leadership Team (ELT) created PF2050, which provides a strategic vision for the organization through the year 2050. PF2050 outlines a transformational journey and was developed with the expressed intent to meet or exceed the fifteen SD policies. This vision will transform OPPD to a digital utility with two-way and multi-directional power and communication flows, build a proactive grid, give customer-owners multiple options, minimize environmental impact, and reduce carbon emissions. The future is coming, and we want to make sure it is illuminated.

Acknowledging the rapidly evolving and increasingly complex environment we operate in, OPPD adopted a future-ready posture mindset. This means we are taking a thoughtful approach to investing in both core work ('keeping the lights on today') and in the efforts to power our next generation. This deliberate and agile approach resulted in the establishment of the enterprise-level resourcing priorities. These enterprise priorities are aligned under PF2050 and influence the current year's budget. The process ensures OPPD's finite resources are being used to facilitate the right work to get us closer to our objectives of Perfect Power, Customer Freedom, and a Cleaner World by 2050.

The 2025-2030 enterprise priorities (listed in priority order below) were established to provide this life essential energy service to our customer-owners and employees. Their requirements and aspirational futures are woven into the very DNA of these priorities and are the underpinnings of everything we do.

1. Resource Adequacy
2. Technology Transformation
3. Next Generation Grid
4. Master Facilities Plan

Powering the Future to 2050

OPPD leveraged PF2050 and the enterprise priorities to guide planning, prioritization, and resourcing decisions for this Corporate Operating Plan. The vision to meet the growing demands of the service territory is becoming a reality as we transition from strategic planning to resourcing the execution in service of our customer-owner requirements in 2030 and beyond. We will continue to build upon our resource prioritization & capacity management framework and strategic STEER trends and risk scanning capabilities that will result in new and better ways to deliver affordable, reliable, and environmentally sensitive energy services to our customers. Additional information regarding PF2050 can be found on https://www.oppdcommunityconnect.com/pf2050.







Enterprise Risk Management (SD-15)

Fundamental to effective planning is an understanding of the District's enterprise level risks and the development and implementation of initiatives and mitigation plans to respond to those risks. The District's Enterprise Risk Management (ERM) program specifies risk management standards, management responsibilities, and controls to help ensure risk exposures are properly identified and managed within agreed upon risk tolerance levels. Specific risk mitigation plans and procedures are maintained and reviewed periodically to provide focused and consistent efforts to mitigate various risk exposures. An increased focus on emerging risks, such as disruptive technology, was launched in 2023. This process will continue to strengthen executive leadership's understanding of these risks to ensure an optimal future-ready posture for the organization. In support of its 2025 corporate planning efforts, OPPD leveraged risk assessments and mitigation plans to help prioritize resource allocation. The ELT will continue to expand this effort by incorporating those critical trends identified and associated with PF 2050.

Theme	OPPD's Risk Management Focus
Retail Revenues & Wholesale Revenues	Persistently pursue customer and economic development to achieve economies of scale and strengthen the affordability of our rates. Optimize wholesale revenues and purchases to further benefit our customer-owners.
Resource Adequacy and Reliability	Acquire and maintain a high availability and diverse generation portfolio to serve a significantly growing customer demand.
Environmental Sensitivity	Ensure the District is compliant with all environmental regulations, well-positioned to respond to new regulations, and able to minimize our environmental impact.
Fuel Costs	Effectively manage the District's fuel portfolio through numerous mitigation strategies to continue to ensure low cost and resilient generation.
AMI & Tech Transformation Execution	Deliver world-class execution of priority initiatives that will create a future-ready posture to deliver increased value to our customer-owners.
Cyber & Physical Security	Vigorously defend customer information and District assets from all potential cyber and physical security threats inherent with national critical infrastructure.
Infrastructure Investment	Optimally invest in transmission, distribution, substation, facility, and technology assets to ensure reliable and resilient energy services and supporting functions will meet the demands of our customer-owners.
Workplace Safety	Continue promoting safety as a top priority to ensure every employee and contractor goes home as healthy as they came into work.
Community Partnership	Honor and support the communities in which we operate and fulfill the promise of public power.



ASSUMPTIONS

Assumptions

2025 Proposed Rate Action

Effective January 1, 2025, OPPD's 2025 Corporate Operating Plan assumes an average total rate increase of 6.3% across all customer classes, composed of a 4.9% average general rate increase and a 1.4% increase from the FPPA factor and replenishment of the RSA. The general rate increase is largely driven by rising net power costs and a growing capital portfolio which leads to additional debt issuances. The FPPA and replenishment of the RSA is driven by outages and storm restoration costs.

General

2024 Projected

Revenues, operations and maintenance (O&M), capital and deferred expenditures reflect the 2024 actual values and forecast submitted through September 30, 2024.

Financing/Investing

Financing

Revenue bonds with net proceeds of $460.0 million are included in the 2025 budget. The proceeds of these bonds are expected to be used for capital expenditures.

Average Earnings Rates on Funds

The average earnings rate used for all funds (including special purpose) for 2025 is 3.6% which is a decrease of 0.5% from the prior year's rate of 4.1%.

Energy Sales/Revenues

Load Forecast

The plan assumes a 12.5% increase in retail energy sales (MWh) and a 2.1% increase in the number of customers in 2025, as compared to the 2024 budget.

Assumptions

Generation and Purchased Power

Outages have been scheduled for the following base-load units in 2025:

1. Nebraska City Station Unit Number 2
2. North Omaha Station Units 4 & 5

Additionally, there are several shorter outages scheduled for other units. The purchased power budget includes generation supplied from 1,272 megawatts of wind capability, 80 megawatts of hydropower from the Western Area Power Administration, as well as 86 megawatts of solar capability.

Department Operations and Maintenance Budget

Department and division level budgets were proposed, and these plans were reviewed with the ELT for alignment with the strategic and operational objectives before submitting them in the 2025 Corporate Operating Plan for Board final approval.

Capital Budget Expenditures

The capital portfolio prioritization and allocation process continues to improve capital planning. The process enables better alignment with the strategic directives and provides more transparency of capital spending through improved project review and approval processes. The size of the capital budget continues to grow as the District undergoes system expansion to provide reliable electric service to a growing community.

Total 2025 Budget

The total 2025 Budget is $2.3 billion.

BUDGET SUMMARY
(DOLLARS IN THOUSANDS)

Total Budget

	BUDGET 2024	BUDGET 2025	INCREASE / (DECREASE)	% CHANGE
Capital Expenditures*	$ 727,000	$ 788,000	$ 61,000	8.4
Non-Fuel Operations & Maintenance	528,335	582,729	54,394	10.3
Fuel and Purchased Power	492,691	567,138	74,447	15.1
Total Debt Service and Other Expenses	189,242	216,317	27,075	14.3
Decommissioning Expenditures**	112,918	102,596	(10,322)	(9.1)
Payments in Lieu of Taxes	45,599	53,532	7,933	17.4
Reserves	11,939	13,269	1,330	11.1
TOTAL BUDGET	**$ 2,107,724**	**$ 2,323,581**	**$ 215,857**	**10.2**

*Capital Expenditures are shown net of Contributions in Aid of Construction

**Decommissioning Expenditures represent expenditures related to Decommissioning activity, which differs from Decommissioning Funding ($10.7 million) which is an expense and is reflected on the income statement.

Budget Component Comparison

	BUDGET 2024	BUDGET 2025	CHANGE
Capital Expenditures*	34.5%	33.9%	(0.6)
Non-Fuel Operations & Maintenance	25.1%	25.1%	0.0
Fuel and Purchased Power	23.4%	24.4%	1.0
Total Debt Service and Other Expenses	9.0%	9.3%	0.3
Decommissioning Expenditures**	5.4%	4.4%	(1.0)
Payments in Lieu of Taxes	2.2%	2.3%	0.1
Reserves	0.6%	0.6%	0.0
TOTAL BUDGET	**100.0%**	**100.0%**	**-**

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.

FINANCIAL STATEMENTS



Financial Statements

Income Statement

The District uses a 2.0 debt service coverage ratio as the basis of annual budgets, which is based on SD-3 Access to Credit Markets. It should be noted that OPPD does not set budgets or other forward-looking plans on the basis of net income. Net income for 2025 is budgeted to be $203.1 million, which is $41.7 million or 25.9% higher than the 2024 budget.

Major Factors Contributing to the Change in Budgeted Operating and Net Income:

Operating revenues are $1,671.2 million, which is $238.8 million or 16.7% higher than the 2024 budget. As the District anticipates load growth across all customer classes, retail revenues are expected to increase $208.7 million or 17.0% from the 2024 budget. The increase in operating revenue was also impacted by higher wholesale revenue of $25.6 million or 15.6%. The wholesale revenue increase is largely driven by higher congestion hedging revenue. The 2024 budget took a very conservative approach to congestion hedging revenues, leading to an increase in 2025 to more closely reflect actual performance.

Operations and maintenance expenses are $1,149.9 million, which is $128.8 million or 12.6% higher than the 2024 budget. Fuel and purchased power account for an increase of $74.4 million, or 15.1%, when compared to 2024 budget. Other O&M increases are driven by costs and headcount growth associated with the District's strategic priorities as well as additional investment in vegetation management.

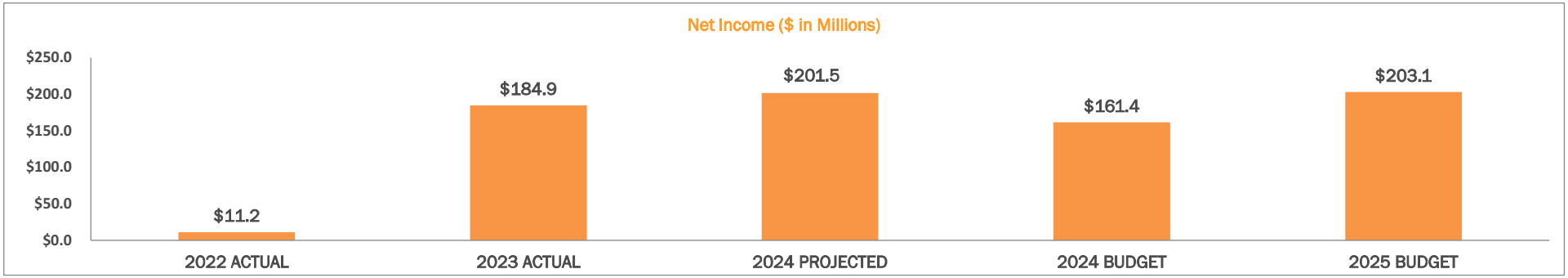
Other income is $88.8 million, which is $2.8 million or 3.2% higher than the 2024 budget amount due to largely offsetting impacts. Allowance for funds used during construction (AFUDC) is budgeted to increase by $13.1 million due to a growing capital portfolio, offset by decreased interest income of $11.9 million due to a lower earnings rate for funds on deposit.

Interest expense is $174.3 million in 2025 which is $22.6 million or 14.9% higher than the 2024 budget due to additional planned debt issuances required to execute a large capital portfolio.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

INCOME STATEMENT
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	% CHANGE
OPERATING REVENUES	$ 1,400,784	$ 1,428,905	$ 1,516,446	$ 1,432,358	$ 84,088	$ 1,671,191	$ 238,833	16.7
OPERATING EXPENSES								
O&M EXPENSE	962,458	1,036,164	1,090,192	1,021,028	69,163	1,149,867	128,839	12.6
DEPRECIATION EXPENSE	150,074	124,980	143,871	138,448	5,423	183,433	44,985	32.5
PAYMENTS IN LIEU OF TAXES	40,462	42,498	45,827	45,599	228	53,532	7,934	17.4
DECOMMISSIONING EXPENSE	141,918	33,320	16,148	15,298	850	10,694	(4,604)	(30.1)
REGULATORY AMORTIZATION	14,835	13,600	-	-	-	-	-	-
TOTAL OPERATING EXPENSE	**$ 1,309,747**	**$ 1,250,562**	**$ 1,296,037**	**$ 1,220,373**	**$ 75,664**	**$ 1,397,526**	**$ 177,154**	**14.5**
OPERATING INCOME	**$ 91,037**	**$ 178,343**	**$ 220,409**	**$ 211,985**	**$ 8,423**	**$ 273,665**	**$ 61,680**	**29.1**
INTEREST INCOME	20,481	35,412	61,646	54,211	7,434	42,355	(11,856)	(21.9)
ALLOWANCE FOR FUNDS USED	16,427	33,079	39,504	26,332	13,173	39,481	13,149	49.9
PRODUCTS AND SERVICES - NET	2,868	2,092	1,772	2,484	(712)	3,952	1,469	59.1
MISC. NON OPERATING INCOME	25,917	4,718	1,008	3,000	(1,992)	3,000	-	-
MARK TO MARKET	(60,693)	38,747	11,204	-	11,204	-	-	-
TOTAL OTHER INCOME	**$ 5,000**	**$ 114,048**	**$ 115,134**	**$ 86,027**	**$ 29,108**	**$ 88,788**	**$ 2,761**	**3.2**
TOTAL INCOME LESS OPERATING EXPENSE	**$ 96,037**	**$ 292,391**	**$ 335,543**	**$ 298,012**	**$ 37,531**	**$ 362,453**	**$ 64,441**	**21.6**
INCOME DEDUCT. & INT. CHARGES								
INTEREST EXPENSE	97,739	120,168	147,203	151,720	(4,517)	174,319	22,599	14.9
OTHER INCOME DEDUCTIONS	1,787	3,091	3,917	1,205	2,712	1,205	-	-
AMORTIZATION	(14,694)	(15,767)	(17,030)	(16,271)	(759)	(16,157)	114	(0.7)
TOTAL INCOME DEDUCT. & INT. CHARGES	**$ 84,832**	**$ 107,491**	**$ 134,090**	**$ 136,654**	**$ (2,564)**	**$ 159,367**	**$ 22,713**	**16.6**
NET INCOME	**$ 11,205**	**$ 184,900**	**$ 201,453**	**$ 161,358**	**$ 40,095**	**$ 203,086**	**$ 41,728**	**25.9**



NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.

Financial Statements

Coverage Ratios

The Total Debt Service Coverage ratio, which is the key metric viewed by credit rating agencies, is budgeted to be 2.00 times in 2025, as directed by SD-3 Access to Credit Markets.

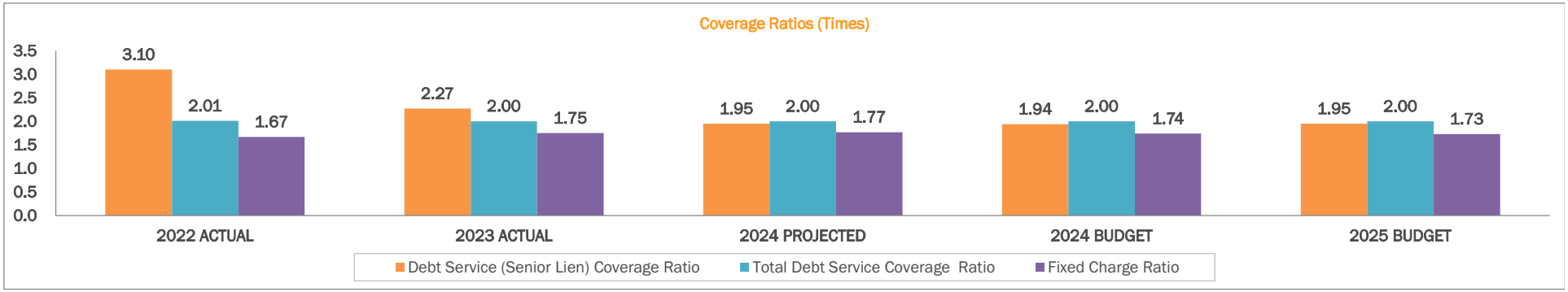
The Fixed Charge ratio is budgeted at 1.73 times in 2025, as compared to the budgeted 2024 value of 1.74 times.

The Senior Lien Debt Service Coverage ratio is budgeted to slightly increase to 1.95 compared to the 2024 metric of 1.94 times as increases in net receipts are offset by additional debt service requirements from additional borrowings. The additional debt issuances for senior lien revenue bonds are expected to be used to support a growing capital portfolio. Senior lien debt service requirements are expected to increase by $36.2 million or 19.6% from the 2024 budget amount.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

COVERAGE RATIOS
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	25 BUDGET VS. 24 BUDGET % CHANGE
OPERATING REVENUES (EXCL. NC2)	$ 1,331,698	$ 1,354,221	$ 1,448,671	$ 1,368,804	$ 79,867	$ 1,600,681	$ 231,877	16.9
INTEREST INCOME - BONDS RESERVE ACCOUNT	1,357	3,229	5,354	3,491	1,863	4,383	892	25.6
PAYMENTS IN LIEU OF TAXES	(40,462)	(42,498)	(45,827)	(45,599)	(228)	(53,532)	(7,934)	17.4
O&M EXPENSE (EXCL. NC2 PARTICIPANT SHARE)	(930,054)	(1,000,481)	(1,055,662)	(966,215)	(89,447)	(1,118,677)	(152,462)	15.8
NET RECEIPTS	**$ 362,539**	**$ 314,471**	**$ 352,536**	**$ 360,481**	**$ (7,945)**	**$ 432,854**	**$ 72,373**	**20.1**
TOTAL DEBT SERVICE COVERAGE RATIO (DSC)	**2.01**	**2.00**	**2.00**	**2.00**	**-**	**2.00**	**$0**	**-**
DEBT SERVICE REQUIREMENTS (SENIOR LIEN)	$ 116,947	$ 138,251	$ 180,755	$ 185,183	$ (4,428)	$ 221,392	$36,209	19.6
DEBT SERVICE (SENIOR LIEN) COVERAGE RATIO	3.10	2.27	1.95	1.94		1.95		
FIXED CHARGE RATIO	1.67	1.75	1.77	1.74		1.73		



NOTE: Some columns may not foot exactly due to the method used for individual line item rounding. Total DSC as defined in OPPD's published Strategic Directive-3: Access to Credit Markets.

Financial Statements

Debt and Financing Data

Total senior lien revenue bonds outstanding at year-end 2025 are budgeted to equal $3,480 million. The 2025 budget anticipates the issuance of approximately $460.0 million of new senior lien revenue bonds and also includes senior lien revenue bond maturities and retirements of $52.5 million.

The 2025 budget does not anticipate the issuance of new subordinated bonds as all will mature or be retired during 2024.

Total commercial paper outstanding at year-end 2025 is budgeted to remain at the 2024 level of $250.0 million. The 2025 budget does anticipate the net impact of both an issuance and retirement of $100.0 million in new commercial paper.

Total separate system (Nebraska City Unit 2 (NC2)) revenue bonds outstanding at year-end 2025 are budgeted to equal $185.1 million. The 2025 budget does not anticipate the issuance of new NC2 revenue bonds but does have NC2 revenue bond maturities and retirements of $4.4 million.

The total average interest rate on existing debt is budgeted at 4.45% at the end of 2025 and the debt to capitalization ratio is budgeted to be 65.6% for 2025.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

DEBT AND FINANCING DATA
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	% CHANGE
SENIOR LIEN REVENUE BONDS								
BALANCE - BEGINNING OF YEAR	$ 1,524,630	$ 1,935,320	$ 2,439,775	$ 2,439,775	$ -	$ 3,072,490	$ 632,715	25.9
NEW ISSUES	420,565	549,760	906,755	448,657	458,098	460,000	11,343	2.5
MATURITIES / RETIREMENTS	(9,875)	(45,305)	(274,040)	(45,895)	(228,145)	(52,535)	(6,640)	14.5
BALANCE - END OF YEAR	**$ 1,935,320**	**$ 2,439,775**	**$ 3,072,490**	**$ 2,842,537**	**$ 229,953**	**$ 3,479,955**	**$ 637,418**	**22.4**
AVERAGE INTEREST RATE (END OF YEAR)	3.85%	3.79%	4.13%	4.47%		4.44%		
SUBORDINATED								
BALANCE - BEGINNING OF YEAR	229,775	227,225	134,745	134,745	-	-	(134,745)	(100.0)
NEW ISSUES	-	-	-	-	-	-	-	-
MATURITIES / RETIREMENTS	(2,550)	(92,480)	(134,745)	(2,560)	(132,185)	-	2,560	(100.0)
BALANCE - END OF YEAR	**$ 227,225**	**$ 134,745**	**$ -**	**$ 132,185**	**$ (132,185)**	**$ -**	**$ (132,185)**	**(100.0)**
AVERAGE INTEREST RATE (END OF YEAR)	4.23%	6.54%		4.01%				
COMMERCIAL PAPER								
BALANCE - BEGINNING OF YEAR	325,000	250,000	250,000	250,000	-	250,000	-	-
NEW ISSUES	-	100,000	100,000	-	100,000	100,000	100,000	-
MATURITIES / RETIREMENTS	(75,000)	(100,000)	(100,000)	-	(100,000)	(100,000)	(100,000)	-
BALANCE - END OF YEAR	**$ 250,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	**$ -**	**$ 250,000**	**$ -**	**-**
AVERAGE INTEREST RATE (END OF YEAR)	1.50%	3.72%	4.00%	4.00%		4.27%		
SEPARATE SYSTEM REVENUE BONDS (NC2)								
BALANCE - BEGINNING OF YEAR	201,495	197,680	193,680	193,680	-	189,480	(4,200)	(2.2)
NEW ISSUES	-	-	-	-	-	-	-	-
MATURITIES / RETIREMENTS	(3,815)	(4,000)	(4,200)	(4,200)	-	(4,415)	(215)	5.1
BALANCE - END OF YEAR	**$ 197,680**	**$ 193,680**	**$ 189,480**	**$ 189,480**	**$ -**	**$ 185,065**	**$ (4,415)**	**(2.3)**
AVERAGE INTEREST RATE (END OF YEAR)	4.95%	4.95%	4.95%	4.95%		4.95%		
TOTAL AVERAGE INTEREST RATE (END OF YEAR)	**3.74%**	**3.98%**	**4.32%**	**4.44%**		**4.45%**		
TOTAL INTEREST EXPENSE (ON DEBT)	**$ 84,832**	**$ 107,491**	**$ 134,090**	**$ 136,654**	**$ (2,564)**	**$ 159,367**	**$ 25,277**	**18.9**
DEBT TO CAPITALIZATION RATIO	**64.00%**	**64.00%**	**65.60%**	**66.00%**		**65.60%**		

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.

Financial Statements

Cash Flow Analysis

2025 Budget Compared to 2024 Budget

Cash Receipts

2025 cash receipts are budgeted to increase by $221.5 million to $1,714.3 million, a 14.8% change. This increase is primarily due to increased retail revenue from projected load growth and the general rate increase to customers.

Cash Disbursements

2025 cash disbursements are budgeted to increase by $221.5 million to $2,251.4 million, a 10.9% shift. Increases in cash disbursements relate to capital expenditures from a growing capital portfolio that also impacts increased debt service to support the capital portfolio. In addition, purchased power is expected to increase by $66.6 million due to higher purchase volumes to support customer load growth.

The budgeted values of cash receipts and disbursements result in a year-end cash balance of $688.3 million in 2025, a 30.1% or $159.4 million increase over 2024 budget.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

CASH FLOW ANALYSIS
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	% CHANGE
CASH BEGINNING OF PERIOD	$ 636,681	$ 667,880	$ 693,066	$ 642,041	$ 51,025	$ 765,405	$ 123,364	19.2
RECEIPTS								
RETAIL REVENUES	1,126,285	1,109,853	1,266,898	1,222,054	44,844	1,423,890	201,836	16.5
WHOLESALE REVENUES (INCL. NC2)	248,490	239,797	229,419	168,881	60,538	194,677	25,796	15.3
INTEREST INCOME	50,004	53,081	59,235	57,211	2,024	45,034	(12,177)	(21.3)
OTHER ELECTRIC REVENUES	42,940	46,205	46,437	42,234	4,203	46,776	4,542	10.8
PRODUCTS & SERVICES	2,086	2,978	2,696	2,484	212	3,953	1,469	59.1
USE OF RESERVE ACCOUNTS	-	-	13,269	-	13,269	-	-	-
TOTAL RECEIPTS	**$ 1,469,805**	**$ 1,451,914**	**$ 1,617,954**	**$ 1,492,864**	**$ 125,090**	**$ 1,714,329**	**$ 221,465**	**14.8**
DISBURSEMENTS								
CAPITAL EXPENDITURES	551,032	574,608	762,355	727,000	35,355	788,000	61,000	8.4
O&M EXPENSE (W/O FUEL & PURCHASED POWER)	409,119	497,369	523,309	540,396	(17,087)	581,882	41,486	7.7
PURCHASED POWER	357,276	337,969	406,935	310,416	96,519	377,052	66,636	21.5
DEBT SERVICE	146,457	272,569	209,453	215,568	(6,115)	244,632	29,064	13.5
FUEL	188,414	157,894	147,135	178,358	(31,223)	187,841	9,483	5.3
PAYMENTS IN LIEU OF TAXES	38,605	40,494	42,281	42,882	(601)	48,044	5,162	12.0
CONTRIBUTIONS TO RESERVE ACCOUNTS	-	-	-	-	-	13,269	13,269	-
DECOMMISSIONING EXPENSE	141,918	33,320	16,303	15,298	1,005	10,694	(4,604)	(30.1)
CHANGES IN OTHER NET ASSETS	(17,420)	(36,663)	40	-	40	-	-	-
TOTAL DISBURSEMENTS	**$ 1,815,401**	**$ 1,877,560**	**$ 2,107,810**	**$ 2,029,918**	**$ 77,892**	**$ 2,251,415**	**$ 221,497**	**10.9**
NET OPERATING CASH FLOW	**$ (345,596)**	**$ (425,646)**	**$ (489,856)**	**$ (537,054)**	**$ 47,198**	**$ (537,086)**	**$ (32)**	**0.0**
FINANCING	474,385	477,870	968,651	448,657	519,994	483,000	34,343	7.7
FINANCING COST / RESERVE AMOUNT	(22,590)	(27,038)	(46,126)	(24,676)	(21,450)	(23,000)	1,676	(6.8)
COMMERCIAL PAPER - NET	(75,000)	-	-	-	-	-	-	-
OTHER	-	-	(360,330)	-	(360,330)	-	-	-
TOTAL FINANCING	**$ 376,795**	**$ 450,832**	**$ 562,195**	**$ 423,981**	**$ 138,214**	**$ 460,000**	**$ 36,019**	**8.5**
TOTAL CHANGE IN CASH	31,199	25,186	72,339	(113,073)	185,412	(77,086)	35,987	(31.8)
CASH END OF PERIOD	**$667,880**	**$693,066**	**$765,405**	**$528,968**	**$236,437**	**$688,319**	**$159,351**	**30.1**
DECOMMISSIONING FUND	**$534,901**	**$479,964**	**$406,731**	**$346,768**	**$59,963**	**$288,684**	**($58,084)**	**(16.8)**

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.



ENERGY SALES

Energy Sales

Electric Energy Sales & Electric Customers

Total electric energy sales are budgeted to be 18,878,664 MWh, which is 8.5% or 1,479,981 MWh more than the 2024 budget. Retail energy sales are budgeted to be 15,355,048 MWh, or 12.5%, greater when compared to 2024 budget. This increase is driven by load growth across all customer classes. Wholesale energy sales (including NC2 participation sales) are budgeted to decrease by 226,624 MWh or 6.0% from 2024 budget as volumes are expected to decrease due to load growth consuming owned generation and leaving less energy available to sell into the marketplace.

In 2025, the average number of retail customers is budgeted to increase by 8,762, a 2.1% increase from 2024 budget.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

ELECTRIC ENERGY SALES AND CUSTOMERS

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET. MWh CHANGE	% CHANGE
ELECTRIC ENERGY SALES (MWh)								
RESIDENTIAL	3,937,046	3,947,870	3,857,951	3,995,295	(137,344)	4,044,941	49,646	1.2
COMMERCIAL	3,763,330	3,796,608	3,800,810	3,891,422	(90,613)	3,927,174	35,752	0.9
INDUSTRIAL	4,293,784	4,683,632	5,812,465	5,703,474	108,990	7,318,775	1,615,301	28.3
UNBILLED SALES	111,815	(56,155)	83,552	58,252	25,301	64,158	5,906	10.1
RETAIL ENERGY SALES	**12,105,976**	**12,371,955**	**13,554,778**	**13,648,443**	**(93,666)**	**15,355,048**	**1,706,604**	**12.5**
NC2 PARTICIPANT	1,867,157	1,355,808	2,168,480	2,096,963	71,517	1,894,840	(202,123)	(9.6)
OTHER	2,543,536	1,969,829	1,397,202	1,653,278	(256,076)	1,628,777	(24,501)	(1.5)
WHOLESALE ENERGY SALES	**4,410,693**	**3,325,638**	**3,565,682**	**3,750,240**	**(184,559)**	**3,523,617**	**(226,624)**	**(6.0)**
TOTAL MWh SALES	**16,516,668**	**15,697,593**	**17,120,459**	**17,398,684**	**(278,224)**	**18,878,664**	**1,479,981**	**8.5**
ELECTRIC CUSTOMERS (12 MONTH AVG.)								
RESIDENTIAL	351,712	357,528	363,042	361,464	1,578	369,548	8,084	2.2
COMMERCIAL	49,550	49,782	50,320	49,987	333	50,665	678	1.4
INDUSTRIAL	135	133	135	149	(14)	149	-	-
TOTAL RETAIL CUSTOMERS	**401,397**	**407,443**	**413,497**	**411,600**	**1,897**	**420,362**	**8,762**	**2.1**
kWh / CUSTOMER								
RESIDENTIAL	11,194	11,042	10,627	11,053	(426)	10,946	(107)	(1.0)
COMMERCIAL	75,950	76,265	75,533	77,849	(2,316)	77,513	(336)	(0.4)
INDUSTRIAL	31,805,809	35,215,275	43,055,293	38,278,351	4,776,942	49,119,296	10,840,944	28.3
AVERAGE kWh / CUSTOMER	**29,881**	**30,503**	**32,579**	**33,018**	**(439)**	**36,376**	**3,358**	**10.2**

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.

Energy Sales

Operating Revenues

Total electric operating revenues for 2025 are budgeted to be $1,671.2 million, which is $238.8 million or 16.7% above the 2024 budgeted operating revenues. Retail revenues are $208.7 million or 17.0% greater than 2024 budget due to load growth across all customer classes. Wholesale revenues are $25.6 million or 15.6% higher when compared to the 2024 budget primarily due to increased congestion hedging revenue.

OPERATING REVENUES
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	% CHANGE
ELECTRIC OPERATING REVENUES								
RESIDENTIAL	$ 460,848	$ 472,633	$ 479,045	$ 490,025	$ (10,980)	$ 539,712	$ 49,687	10.1
COMMERCIAL	336,360	350,956	371,319	378,580	(7,261)	402,565	23,985	6.3
INDUSTRIAL	291,343	317,828	378,704	363,789	14,915	504,432	140,642	38.7
UNBILLED REVENUES/ADJUSTMENTS	10,556	(2,354)	4,267	5,185	(918)	5,677	492	9.5
FPPA RECEIVABLE AMORTIZATION	7,400	(7,400)	4,766	-	4,766	(4,766)	(4,766)	-
USE OF (CONTRIBUTION TO) RESERVE	(6,000)	7,000	13,269	(11,939)	25,208	(13,269)	(1,330)	11.1
TOTAL RETAIL SALES	**$ 1,100,507**	**$ 1,138,663**	**$ 1,251,370**	**$ 1,225,640**	**$ 25,730**	**$ 1,434,351**	**$ 208,711**	**17.0**
NC2 PARTICIPANTS	69,086	74,684	67,775	63,554	4,221	70,511	6,956	10.9
OTHER	187,392	168,896	150,753	100,930	49,823	119,554	18,624	18.5
TOTAL WHOLESALE REVENUES	**$ 256,478**	**$ 243,580**	**$ 218,528**	**$ 164,484**	**$ 54,044**	**$ 190,065**	**$ 25,580**	**15.6**
TOTAL SALES OF ELECTRIC ENERGY	**$ 1,356,985**	**$ 1,382,243**	**$ 1,469,899**	**$ 1,390,125**	**$ 79,774**	**$ 1,624,416**	**$ 234,291**	**16.9**
OTHER ELECTRIC REVENUES	43,799	46,662	46,547	42,233	4,314	46,776	4,542	10.8
TOTAL ELECTRIC OPERATING REVENUES	**$1,400,784**	**$1,428,905**	**$1,516,446**	**$1,432,358**	**$84,088**	**$1,671,191**	**$238,833**	**16.7**

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.

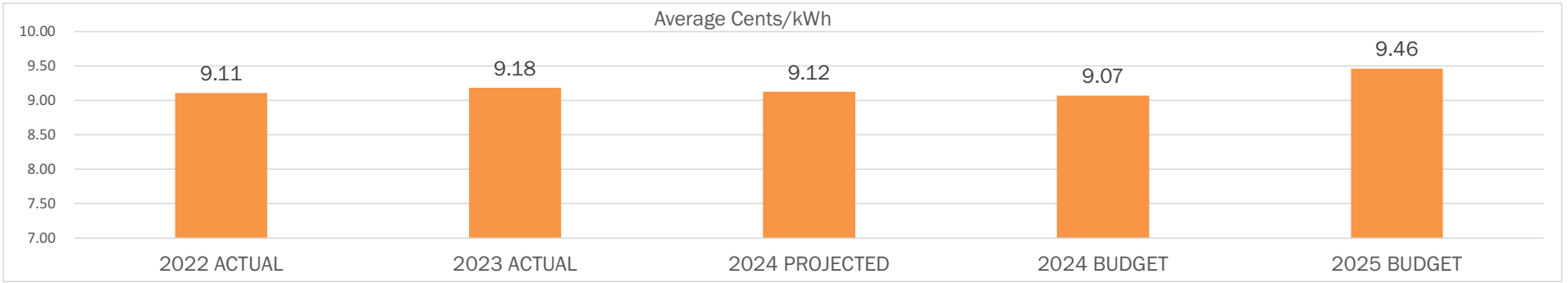
Energy Sales

Average Cents/kWh

The 2025 average price per kWh for retail customers is budgeted to be 9.46 cents. This is 0.39 cents, or a 4.3% increase, from the 2024 budget. A Cost-of-Service Study was performed to determine the cost of providing electric service to each rate class. The study was used as a baseline to determine the appropriate rate increase for each class. Individual customer impacts will vary based on their specific rate class and usage patterns.

AVERAGE CENTS/kWh

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	% CHANGE
RESIDENTIAL	11.73	11.97	12.42	12.27	0.15	13.34	1.07	8.7
COMMERCIAL	8.95	9.24	9.77	9.73	0.04	10.25	0.52	5.4
INDUSTRIAL	6.88	6.79	6.52	6.38	0.14	6.89	0.51	8.0
RETAIL AVERAGE *	**9.11**	**9.18**	**9.12**	**9.07**	**0.06**	**9.46**	**0.39**	**4.3**



NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.
* Average rates are from the revenue recognized on the Income Statement and do not incorporate accrued unbilled. These rates differ from customer billed rates and are calculated for benchmarking and illustrative purposes only.



NET SYSTEM REQUIREMENTS

Net System Requirements

Net system requirements (total retail sales as shown on the next page) for 2025 are budgeted to be 16,096,875 MWh, an increase of 1,731,308 MWh or 12.1% from the 2024 budget. The major components of net system requirements are below by sales and supply components.

Total sales are budgeted to increase 1,479,981 MWh or 8.5% from the 2024 budget, an increase largely driven by retail sales with an increase of 1,706,605 or 12.5% when compared to the 2024 budget.

For supply components, firm/participation purchases are the largest change with a budgeted increase of 1,143,962 MWh or 27.5% from the 2024 budget due to Platteview Solar and Milligan Wind being in service for the entirety of 2025.

Net System Requirements
Sales and Supply Components (MWh)

	BUDGET 2024	BUDGET 2025	INCREASE / (DECREASE)	% CHANGE
Sales Components				
Retail Sales	13,648,443	15,355,048	1,706,604	12.5
NC2 Participation Sales	2,096,963	1,894,840	(202,123)	(9.6)
Wholesale Energy Sales	1,653,278	1,628,777	(24,501)	(1.5)
Total	**17,398,684**	**18,878,664**	**1,479,981**	**8.5**
Supply Components				
Generation	10,147,180	10,252,594	105,414	1.0
Purchased Power Agreements	4,158,744	5,302,706	1,143,962	27.5
Wholesale Purchases	3,809,884	4,065,192	255,308	6.7
Lost or Unaccounted For	(717,124)	(741,828)	(24,703)	3.4
Total	**17,398,684**	**18,878,664**	**1,479,981**	**8.5**

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

NET SYSTEM REQUIREMENTS

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET MWh CHANGE	% CHANGE
GENERATION (MWh)								
GENERATION	**9,335,878**	**7,959,596**	**7,595,771**	**10,147,180**	**(2,551,408)**	**10,252,594**	**105,414**	**1.0**
FIRM/PARTICIPATION PURCHASES	4,473,672	3,514,769	4,484,291	4,158,744	325,547	5,302,706	1,143,962	27.5
WHOLESALE PURCHASES	3,198,414	4,655,118	5,544,605	3,809,884	1,734,721	4,065,192	255,308	6.7
TOTAL PURCHASES	**7,672,086**	**8,169,888**	**10,028,896**	**7,968,628**	**2,060,268**	**9,367,898**	**1,399,270**	**17.6**
TOTAL INPUT	**17,007,963**	**16,129,483**	**17,624,668**	**18,115,808**	**(491,140)**	**19,620,492**	**1,504,684**	**8.3**
WHOLESALE ENERGY SALES								
NC2 PARTICIPANT	1,867,157	1,355,808	2,168,480	2,096,963	71,517	1,894,840	(202,123)	(9.6)
OTHER	2,543,536	1,969,829	1,397,202	1,653,278	(256,076)	1,628,777	(24,501)	(1.5)
TOTAL WHOLESALE ENERGY SALES	**4,410,693**	**3,325,638**	**3,565,682**	**3,750,240**	**(184,559)**	**3,523,617**	**(226,624)**	**(6.0)**
NET SYSTEM REQUIREMENTS	**12,597,271**	**12,803,845**	**14,058,986**	**14,365,568**	**(306,582)**	**16,096,875**	**1,731,308**	**12.1**
TOTAL RETAIL SALES	12,105,976	12,371,955	13,554,778	13,648,443	(93,666)	15,355,048	1,706,604	12.5
ENERGY LOST OR UNACCOUNTED FOR	491,295	431,890	504,208	717,124	(212,916)	741,828	24,703	3.4
TOTAL RETAIL SALES	**12,597,271**	**12,803,845**	**14,058,986**	**14,365,568**	**(306,582)**	**16,096,875**	**1,731,308**	**12.1**

PEAK LOAD (MW)								
PEAK LOAD EXCLUDING DEMAND RESPONSE	2,680	2,928	2,959	3,009	(50)	3,164	155	5.2
DEMAND RESPONSE*	126	129	140	140	(0)	128	(12)	(8.6)
PEAK LOAD INCLUDING DEMAND RESPONSE	2,554	2,799	2,819	2,869	(50)	3,036	167	5.8
LOAD FACTOR (%) - REFLECTS DEMAND RESPONSE	56.3	52.2	56.9	57.2	(0.2)	60.5	3.4	5.9

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.
* Does not include voluntary demand response

OPERATIONS AND MAINTENANCE EXPENSE



Operations and Maintenance Expense

The District's 2025 total budgeted O&M expense is $1,149.9 million, which is $128.8 million or 12.6% higher than the 2024 budget.

2025 Budget Compared to 2024 Budget

Purchased power, including wind purchases, represents 33.0% of total O&M expense and is budgeted at $379.7 million. This represents an increase of $67.2 million or 21.5% above the 2024 budget amount. The increase from the 2024 budget is primarily due to higher purchase volumes to serve anticipated customer load growth. As load growth outpaces owned generation, purchased power volumes are expected to increase.

Fuel expense is budgeted at $187.4 million, an increase of $7.3 million or 4.0% more than the 2024 budgeted amount primarily due to a full year of generation from Standing Bear Lake and Turtle Creek stations.

Transmission and distribution expense is budgeted at $192.7 million, which is $26.2 million or 15.7% more than the 2024 budgeted amount. The increase over the budget amount is attributable to additional external services, including tree trimming and cable locating, as well as increased headcount supporting growth at the utility.

Administrative and general expense is budgeted at $178.9 million. This category reflects an increase of $12.0 million or 7.2% more than the 2024 budget. The increase in 2025 is primarily related to rising costs associated with salary and benefits driven by both higher rates and an increase in the number of covered employees.

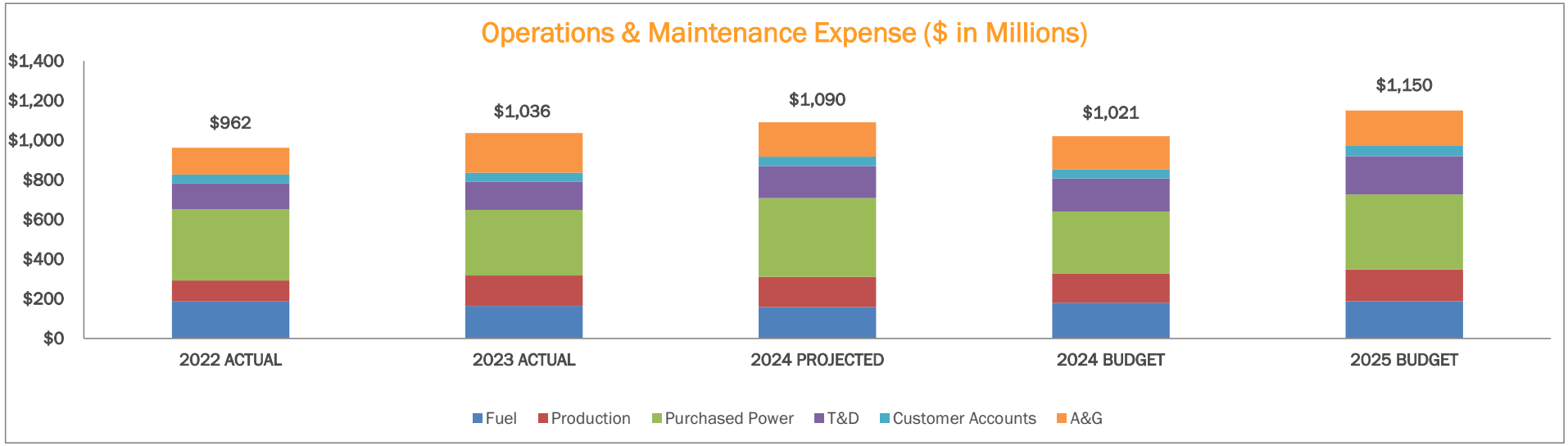
Production expense is budgeted to be $159.7 million, which is $12.0 million or 8.1% above the 2024 budgeted amount and is also impacted by a full year of operation at two new generating facilities, Standing Bear Lake and Turtle Creek as well as headcount growth.

Decommissioning expense represents the annual funding of the decommissioning liability. Decommissioning funding for 2025 is budgeted to be $10.7 million, which is $4.6 million or 30.1% less than the 2024 budget. Contributions to decommissioning represent investment earnings on balances in the decommissioning trust.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

OPERATIONS AND MAINTENANCE EXPENSE
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	% CHANGE
PURCHASED POWER	$ 360,420	$ 332,382	$ 397,566	$ 312,527	$ 85,039	$ 379,716	$ 67,189	21.5
FUEL	186,359	164,240	157,857	180,164	(22,307)	187,422	7,258	4.0
SUBTOTAL	**546,779**	**496,622**	**555,423**	**492,691**	**62,732**	**567,138**	**74,447**	**15.1**
TRANSMISSION AND DISTRIBUTION	130,856	141,390	160,558	166,553	(5,995)	192,708	26,155	15.7
ADMINISTRATIVE AND GENERAL	135,402	199,820	173,038	166,938	6,100	178,926	11,988	7.2
PRODUCTION	105,534	152,812	152,976	147,748	5,228	159,699	11,951	8.1
CUSTOMER	43,887	45,520	48,196	47,096	1,100	51,396	4,300	9.1
TOTAL O&M EXPENSE	**$ 962,458**	**$ 1,036,164**	**$ 1,090,192**	**$ 1,021,028**	**$ 69,166**	**$ 1,149,867**	**$ 128,841**	**12.6**
DECOMMISSIONING EXPENSE	**$ 141,918**	**$ 33,320**	**$ 16,148**	**$ 15,298**	**$ 850**	**$ 10,694**	**$ (4,604)**	**(30.1)**



NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.



CAPITAL EXPENDITURE PLAN

Capital Expenditure Plan

Capital Expenditures

The 2025 capital budget was derived by breaking investments into three categories, sustain, enterprise priority and expand. This categorization ensures the District invests at appropriate levels to maintain existing assets but also invests in the continuing expansion of the utility.

Sustain - capital projects aimed at maintaining and improving existing assets

Expand - new assets, increasing the District's asset base

Enterprise Priority - projects directly related to Resource Adequacy, Technology Transformation, Next Generation Grid and the Master Facilities Plan

Capital expenditures represent 33.9% of the total 2025 budget. Capital expenditures are budgeted at $788.0 million, which is $61.0 million or 8.4% more than the 2024 budget.

The year over year growth is primarily related to investments in District expansion and enterprise priorities. Enterprise priority projects are budgeted at $474.1 million, which is a $70.6 million increase over the 2024 budget of $403.5 million, primarily related to investments in new generation. Expand, which includes projects related to load growth and economic development, are budgeted at $120.7 million, an increase of $15.4 million from the 2024 budget. Partially offsetting the budget growth in expand and enterprise priority is a decrease in sustain assets, which have a 2025 budget of $193.3 million, a decrease of $24.9 million from the 2024 budget of $218.2 million. While the District invests a larger percentage of the capital portfolio on enterprise priority and expand projects, the level of investment in sustain assets is decreasing but is still approximately $7.4 million greater than the historical investment rate.

Transmission and Distribution is budgeted at $338.6 million, a decrease of $17.6 million or 4.9% from the 2024 budget. The decrease is largely due to 2024 budgeted investments in owned solar generation that did not materialize, partially offset by additional investment in enterprise priorities, particularly Resource Adequacy and Master Facilities Plan as the District builds out transmission and distribution infrastructure to support new generation and invests in improved facilities.

Production increased to $330.6 million from the 2024 budget spend of $261.3 million. The change of $69.3 million or 26.5% is primarily related to the net impact of decreased spending on Power with Purpose projects as those units are expected to come online in 2024, offset by investments in new combustion turbines that is ramping up in 2025.

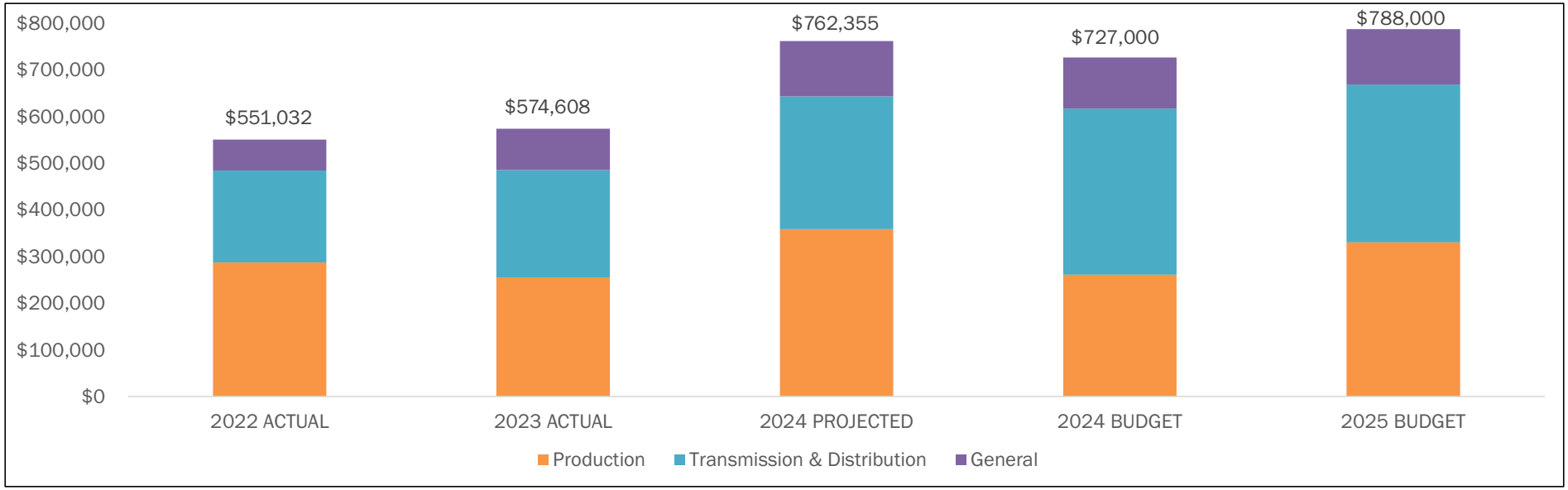
General for 2024 is budgeted to be $118.8 million, which is $9.2 million or 8.4% higher than the 2024 budget. The increase is the result of investment in Next Generation Grid as the District prepares to implement advanced metering infrastructure technology.

OMAHA PUBLIC POWER DISTRICT
2025 CORPORATE OPERATING PLAN

CAPITAL EXPENDITURES
(DOLLARS IN THOUSANDS)

	ACTUAL 2022	ACTUAL 2023	PROJECTED 2024	BUDGET 2024	VARIANCE 2024	BUDGET 2025	25 BUDGET VS. 24 BUDGET $ CHANGE	25 BUDGET VS. 24 BUDGET % CHANGE
TRANSMISSION AND DISTRIBUTION	$ 197,344	$ 230,381	$ 284,302	$ 356,176	$ (71,874)	$ 338,625	$ (17,551)	(4.9)
PRODUCTION	287,260	255,580	359,190	261,259	97,931	330,586	69,327	26.5
GENERAL	66,428	88,647	118,862	109,565	9,297	118,789	9,224	8.4
TOTAL	**$ 551,032**	**$ 574,608**	**$ 762,355**	**$ 727,000**	**$ 35,355**	**$ 788,000**	**$ 61,000**	**8.4**

NOTE: Some columns may not foot exactly due to the method used for individual line item rounding.



CAPITAL EXPENDITURES (DIRECT)
SIGNIFICANT PROJECT DESCRIPTIONS AND HIGHLIGHTS
(Dollars in Thousands)

RECOMMENDED PROJECTS:	2024 Projection	2025 Budget
Near Term Generation Support generation and transmission & distribution for Board Resolution No. 6582 approved on August 15, 2023	$ 149,360	$ 269,671
Master Facilities Plan Investment and upgrades to various OPPD facilities, which are all over 30 years old with only minor enhancements throughout their life	45,785	107,150
Circuit and Substation Upgrades Upgrade and replace multiple circuits and substations due to the expansion of our transmission and distribution infrastructure	61,951	82,076
AMI - Smart Grid Technology to support AMI	34,830	66,265
Transformer Purchases and Replacements Procure transformers to replace aging equipment and support load growth	31,522	30,777
Power with Purpose Support generation and transmission & distribution for Board Resolution No. 6351 approved on November 14, 2019	147,228	21,816

CAPITAL EXPENDITURES (DIRECT)
SIGNIFICANT PROJECT DESCRIPTIONS AND HIGHLIGHTS
(Dollars in Thousands)

RECOMMENDED PROJECTS:	2024 Projection	2025 Budget
Customer Service Residential Project Purchase and installation of underground or overhead infrastructure to new residential developments	$ 18,934	$ 18,432
Transportation Fleet Replacement Routine replacement of OPPD-owned transportation equipment, including light, medium and heavy duty trucks and construction equipment	16,383	18,007
Transmission Distribution Improvement Program-Cable Replacement Replace the worst performing underground distribution cable on a performance driven basis	16,548	15,645
North Omaha Extension Supports continued operation of North Omaha Station	10,690	13,292
Customer Service Commercial and Industrial Project Purchase and installation of underground or overhead infrastructure for commercial and industrial customers	13,182	13,157
Ground Line Inspection and Treatment Pole Replacement Replace degraded wood poles and structures used for transmission and distribution	7,945	11,019

CAPITAL EXPENDITURES (DIRECT)
SIGNIFICANT PROJECT DESCRIPTIONS AND HIGHLIGHTS
(Dollars in Thousands)

RECOMMENDED PROJECTS:	2024 Projection	2025 Budget
Subscription Software Renewals Renew subscription based software used by the district to conduct business	$ 4,767	$ 10,631
Transmission Distribution Improvement Program-Conductors Replace junk conductors on a performance driven basis	6,893	10,088
Transmission and Distribution Street & Highway Project Relocation of OPPD transmission and distribution facilities that are located in public road right-of-way	10,501	10,000
Coal Handling Upgrade Update Nebraska City coal handling system to reduce single point failure possibility	1,258	7,149
Expansion of Computing Storage Allows for real time expansion of computing capacity to allow for growth and support OPPD strategic initiatives	-	5,859
Energy Marketing Trade System OPPD will migrate the Energy Marketing and Trading processes to an industry standard	-	5,075
Substations and Control Centers Security Upgrades Security modifications required to address identified threats and vulnerabilities at various substation and control centers	12,887	4,946

CAPITAL EXPENDITURES (DIRECT)
SIGNIFICANT PROJECT DESCRIPTIONS AND HIGHLIGHTS
(Dollars in Thousands)

RECOMMENDED PROJECTS:	2024 Projection	2025 Budget
Arbor Railroad Line Improvements Repair and replace bridges, ties, ballast, rail, and crossings along the OPPD owned Arbor Rail line	$ 18,021	$ 4,832
Transmission and Distribution Street Light Project Relocation of OPPD street lights facilities that are located in public road right-of-way	3,500	3,500
Nebraska City Common Intake Vacuum Lift System Supports continued operation of Nebraska City at low river levels	-	3,150
Cass County Combustion Inspection Perform manufacturer recommended inpsection and repairs	-	2,950
Bellevue Transmission Redesign Improve the reliability and resiliency of the Bellevue transmission system	876	2,860
Large Motor Capital Repairs Support planned and emergent motor rewinds and replacements	-	2,800
Generation Station Intake Structure Environmental Upgrade Replace existing traveling screens (circulating water intake structure) at North Omaha and Nebraska City Fossil locations for renewal of the environmental permit	2,462	2,405

EXHIBIT 14

Your Energy Partner®
OPPD
Omaha Public Power District

Rate Fundamentals Report

EXHIBIT
G

Disclaimer

The statements made reflect OPPD's opinion and are intended strictly for educational purposes. The materials are intended to provide transparency in rate design and fundamental cost-of-service principles utilized in rate setting by OPPD. Some examples have been simplified for accessibility.

Agenda

I. Introduction
II. Total Cost Determination
III. Cost of Service Study
IV. Rate Design

Your Energy Partner®
OPPD
Omaha Public Power District

I. Introduction

Introduction

Report Goal

OPPD wants our customers to have foundational knowledge of how their rates are structured. This report provides information on how rates are calculated, set annually, and designed to align customer expectations and OPPD's strategic vision. This report connects the Corporate Operating Plan (COP), Strategic Initiatives, and Cost of Service Study (COSS) to help customers understand how these work together in establishing rates.

The following represents the goals of the information contained within this report:

- Introduce electricity basics
- Provide information on OPPD's Total Cost Determination (also referred to as the Revenue Requirement)
- Illustrate the steps performed in an embedded COSS with visibility to key modeling decisions
- Discuss alignment of costs with the fundamental rate elements – demand, energy, and service charges
- Bring visibility to OPPD's strategic vision for rate design

Introduction

Overview of the Rate Process



How large is the pie?

Total Cost Determination

- Determine the total costs required to provide service to our customers.



How to slice the pie?

Cost of Service Study

- Assign the total costs based on the relative contribution of each customer class to the cost drivers.



How to serve the pie?

Rate Design

- Recover the costs with rates that adhere to generally-accepted rate principles.

Introduction

Key Terms and Definitions

Generation	The production of energy via coal, natural gas, and renewables to satisfy peak demand and energy needs of our customers.
Transmission	Transmission of energy via high-voltage supply facilities, power lines, and substations that bring power from the generation source into our service territory.
Distribution	Distribution of energy via facilities and wires that connect the supply of energy to our customers.
Customer Services	Support services for all customers regardless of energy consumption (i.e. billing, metering, data management, customer service, etc.).

Introduction
Key Terms and Definitions

Cost of Service	The process of fairly apportioning the total costs to each customer class based on the relative proportion of their contribution to the costs.
Total Cost Determination	The total cost determination ensures that revenues cover the total costs to serve our customers and support our operations. This is also referred to as the Revenue Requirement.

Introduction
Key Terms and Definitions

Demand Costs	Costs based on the customer's highest amount of power (demand), measured in kilowatts (kW).
Energy Costs	Costs based on the customer's cumulative energy needs, measured in kilowatt-hours (kWh).
Customer Costs	Costs based on the number of customers on the system, measured in customer-months.

Introduction

The Electric Delivery System

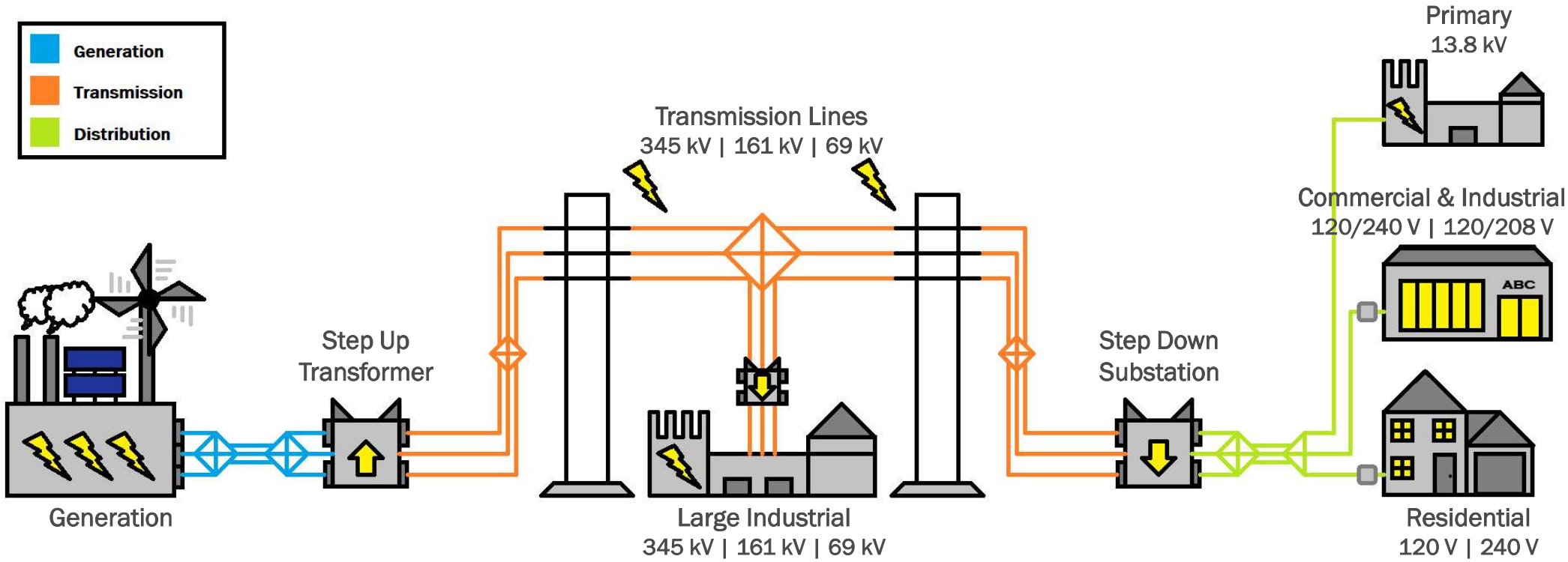


Illustration based off of the following source:

Office of Electricity Delivery and Energy Reliability. (2015, July). *United States Electricity Industry Primer*. U.S. Department of Energy. Retrieved January 2023, from https://www.energy.gov/sites/prod/files/2015/12/f28/united-states-electricity-industry-primer.pdf

Introduction

Electricity Basics: Generation

- Generation is the conversion of energy resources into electricity.
- Energy resources include coal, gas, renewables, and other forms.
- Each energy resource has a different ability to meet various energy needs and usage.
- Resource planning decisions include evaluating load growth expectations, resource adequacy, system resiliency, and cost effectiveness, while also taking into consideration OPPD's Pathways to Decarbonization.



Introduction

Electricity Basics: Generation by Source

- Fuel source is an important factor in generation.
- Fuel sources are typically categorized as renewable vs non-renewable.
- As outlined in the strategic visions of the *Powering the Future to 2050*, OPPD has a net carbon zero goal for 2050.
- By the end of 2024, OPPD's nameplate capacity consisted of 32.4% wind resources, up 5% year over year.

Introduction

Electricity Basics: Generation by Flexibility

- Dispatchable refers to the ability for a generation resource to change its output based on demand (within its generation potential).
- Dispatchable firm resources include technologies like conventional coal thermal, gas-fired combined cycle and combustion turbine, nuclear, geothermal, biomass, and others.
- Some renewable technologies are fully dispatchable such as nuclear and geothermal, while others such as wind and solar are dispatchable but limited to their variable fuel supply (referred to as variable energy resources).
- The ability to control generation output is critical for resiliency as severe weather, localized grid emergencies, and other extreme events can impact customers.
- OPPD's resource planning mix balances the ability to withstand and recover from localized and regional events with securing energy resources and maintaining a diverse portfolio of assets.

Introduction

Electricity Basics: Generation by Usage

- Generation facilities are often categorized by their intended purpose and utilization into the following usage categories:
- **Baseload** refers to facilities that are intended to run around the clock. Baseload units serve the minimum level of demand on the electrical grid over all hours of the day. Typically, these facilities have low fuel costs, but are less flexible to variations in demand.
- **Intermediate** refers to units that run a substantial portion of the year, but not the whole year. Combined-cycle gas units have historically filled this role.
- **Peaker** refers to units that are only utilized during peak hours. Typically, these units have higher fuel costs or economic costs, such as demand response.

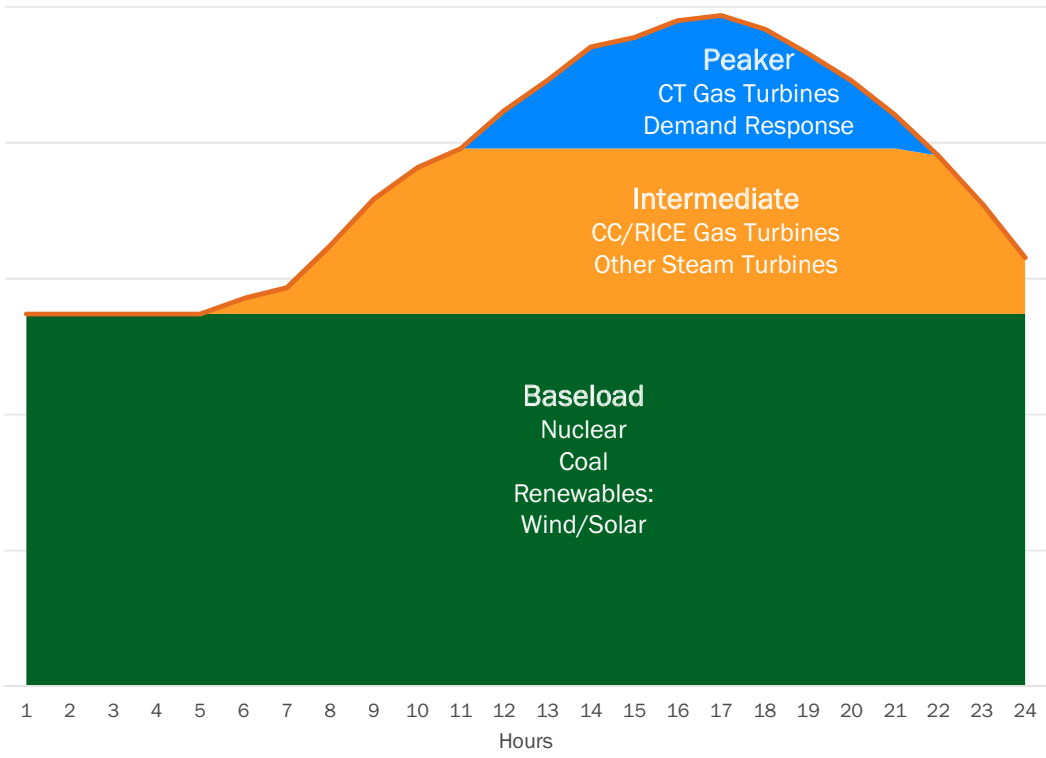


*Chart pictured is for illustrative purposes

Disclaimer on Peaker Resources:
Peaker Resources have historically operated as strictly serving peak load as the name would suggest. However, Peaker Resources currently operate as both serving peak load and balancing renewable resources.

Introduction

Electricity Basics: Transmission

- The transmission system is comprised of high-voltage lines (69kV, 161kV, & 345kV) that transfer bulk electricity between generation facilities and the end customer.
- Transmission lines are typically above ground with large support towers.
  - Air acts as the insulator with higher voltages requiring larger clearance.
  - Higher voltages reduce line losses.
- Some of the largest customers interconnect at the transmission level.
- For resiliency, each load point on the system generally has at least two alternate supply sources.



Introduction

Electricity Basics: Transmission (Cont.)

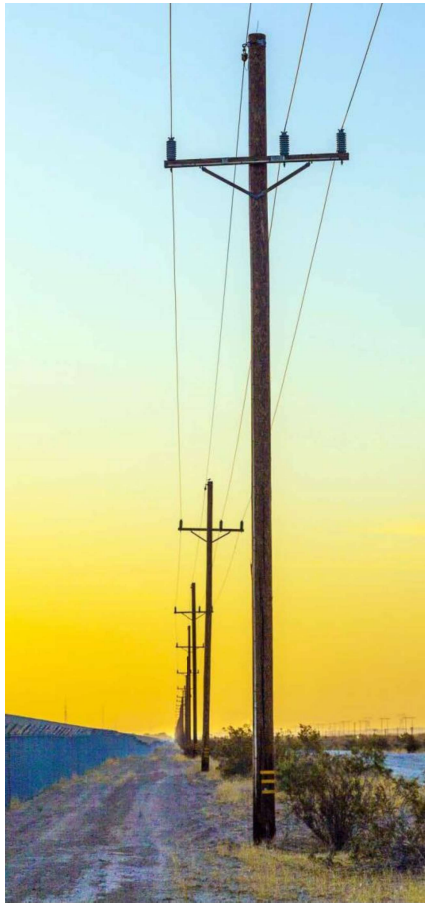
- OPPD's transmission system interconnects both to its generating stations and to neighboring utilities.
- OPPD's transmission system is part of the Eastern Interconnection and is a part of the Southwest Power Pool (SPP).
- SPP oversees regional transmission expansion for the OPPD region and guides the transmission service processes within our service territory.
- Altogether, the interchange of power over the transmission system has oversight by several national and regional entities that help ensure the reliability of the transmission system.



Introduction

Electricity Basics: Distribution

- The distribution system receives power from the transmission system.
- This power is brought down from high-voltage levels through distribution substations to a level that can be used by households and businesses.
- Most customers take service at the distribution level.
  - Primary Level – e.g. 13.8 kV (Three Phase) & 8 kV (Single Phase)
  - Secondary Level – e.g. 120V/240V or less than 600V
- The distribution system consists of the poles, transformers, substations, meters, service drops, and other assets needed to connect service to customers.



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II. Total Cost Determination

Total Cost Determination

Covering our Costs to Serve

- The total cost determination ensures that revenues cover the costs to serve our customers and support our operations, which is commonly referred to as the **Revenue Requirement**.
- The total cost determination is established by Strategic Directive 3 (SD-3), which provides the guiding principles to maintaining a low-cost, flexible structure to support the operation of the utility.
- The main principle established in SD-3 is maintaining a minimum 2.0 Debt Service Coverage Ratio.

$$\text{Debt Service Coverage Ratio} = \frac{\text{Revenues} - \text{Expenses}}{\text{Debt Interest} + \text{Principal Payments}}$$

Total Cost Determination

Capital Expenditure Philosophy

- The Debt Service Coverage Ratio is an important metric in evaluating the health of the utility.
- Maintaining the 2.0 Debt Service Coverage Ratio contributes to OPPD preserving a AA credit rating with the credit rating agencies.
- It ensures that new debt will be issued at competitive bond rates, which lead to lower long-term electricity rates for our customers.
- While Debt Service Coverage is an important consideration, there are other metrics that credit rating agencies consider when evaluating the bond rating. Likewise, OPPD's capital expenditure philosophy and investment decisions extend beyond credit rating agency evaluations.
- When making resource decisions, OPPD considers many factors such as reliability, economic development, competitive rate position, cost, etc.

Total Cost Determination

Return on Investments

- While OPPD does not set a minimum return on its investments on behalf of its customers, OPPD is required by state statute to set rates sufficient to establish and maintain a successful operation that does not incur operating losses (Nebraska Revised Statute 70-655).
- As a publicly-owned utility, any earnings above operating costs are strictly to ensure debt obligations are sustainably funded and investments are not deferred to future customers. Thus, returns are utilized to meet the needs of current customer-owners and support of operations.

Total Cost Determination

Strategic Investments

- OPPD is entering one of the most transformative resource planning eras in its 75-year history as capacity and energy needs grow and the industry evolves.
- OPPD's service territory is experiencing rapid growth in energy needs due to our competitive rates and economic development.
  - For example, peak load increased from 2,545 MW in 2022 to 2,811 MW in 2024
- OPPD remains committed to deliver on its Power with Purpose initiative:
  - 81 MWs of solar added in May 2024 (Platteview Solar Facility)
  - In Q1 2025, OPPD will add ~600 MWs of gas generation (Turtle Creek and Standing Bear Stations)
  - The utility also remains committed to planned North Omaha Station units 4 & 5 conversion from coal to natural gas, and retirement of units 1-3.
- OPPD's Near Term Resource Planning Goals support:
  - 1,000 – 1,500 MW of wind and solar (including 300 MW Milligan Wind Facility added Fall 2024)
  - 125 MW of battery storage
  - 32+ MW of demand response
  - 320 MW of added fuel capacity and fuel oil storage

Total Cost Determination

Planning Process Considerations

While the Integrated Resource Plan (IRP) details the comprehensive work in determining the resource planning strategy, several key considerations are listed below.

Access to Credit Markets	Reliability and Resiliency	Cost Minimization	Environmental Sensitivity
Competitive Rate Position	Economic Development	Customer Experience	Strategic Alignment

Total Cost Determination

Putting It All Together

- The total cost determination supports the overall needs of our system and ensures OPPD's operations remain favorable to credit rating agencies for the issuance of debt to finance investments.
- The total cost determination is driven by the standard established in SD-3 to maintain a minimum 2.0 Debt Service Coverage Ratio.
- OPPD's capital expenditure philosophy ensures that a balanced approach is taken regarding resource decisions to secure access to credit markets, maintain competitive rates, and support the overall health of the system.

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III. Cost of Service

Cost of Service

Embedded Cost of Service Study

- After the Total Cost Determination is complete, we move to the Cost of Service Study (COSS).
  - Total Cost Determination – *How large is the pie?*
  - Cost of Service Study (COSS) – *How do we slice the pie?*
- OPPD utilizes an embedded-cost approach, which is the most common approach in the industry.
- An embedded-cost approach utilizes accounting costs associated with assets and expenses as they occur to provide service.

Cost of Service

Study Goals

- Nebraska Revised Statute 70-655 requires the Board to establish rates that are fair, reasonable, and non-discriminatory.
- The goal of the COSS is to fairly apportion the total costs to each customer class based on the relative proportion of their contribution to those costs.
- There are three fundamental steps in performing an embedded COSS:
  - Functionalization
  - Classification
  - Allocation
- For each fundamental step, the COSS seeks to determine cost causation to appropriately assign costs to each rate class.
  - i.e. What was the cost driver?

Cost of Service

Overview

- The COSS goes through functionalization, classification, and allocation to ensure the costs of providing service are fairly and reasonably apportioned.
- Functionalization separates the utility's assets according to how they are used – generating electricity to meet demand and energy needs, transferring electricity from the power source to the distribution system, and distributing the power to OPPD's customers' premises. Billing and metering is included in distribution.
- Classification provides measures for the service level of each of the functionalized components.
  - Customer demand is measured in kilowatts (kW),
  - Customer energy is measured in kilowatt-hours (kWh)
  - Customer counts are measured in the number of customers (can be a weighted measure)
- Allocation then applies the classification metrics to each rate class.

Cost of Service

Step 1: Functionalization

- **Functionalization** refers to the process of dividing the total costs into three components:
  - Generation
  - Transmission
  - Distribution
- Functionalization is an important step as customers have various electrical service needs:
  - Distribution assets are primarily utilized by residential and commercial customers.
  - Large industrial customers interconnect at the transmission level.
- Proper functionalization ensures that rates are appropriately assigned based on cost causation and characteristics.

Cost of Service

Functionalization FERC Standards

- The process of functionalizing the total costs is straightforward as it typically follows the assignment according to the accounting treatment as set forth in the Uniform System of Accounts (USOA) from the Federal Energy Regulatory Commission (FERC).

Functionalization According to FERC USOA		
Asset Account Number	Item	Expense Account Numbers
300s - 340s	Generation	500s - 550s
350s	Transmission	560s - 570s
360s - 370s	Distribution	580s - 590s

Cost of Service

Functionalization General Categories

Generation

- Fuel, purchased power, and generation assets

Transmission

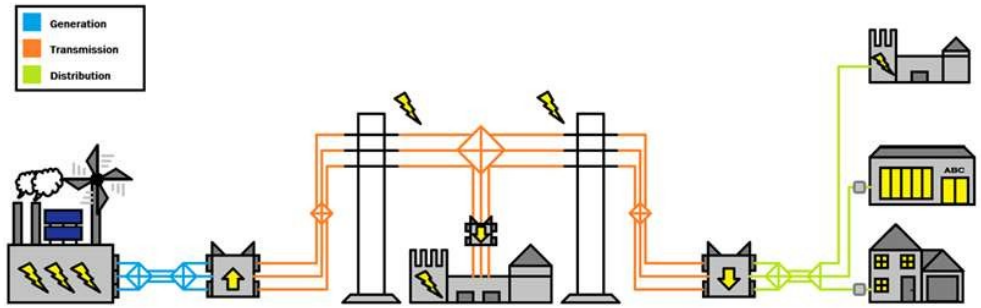
- High-voltage transmission lines (69kV, 161 kV, 345 kV)
- Transmission substations

Distribution

- Distribution substations
- Distribution lines (primary and secondary)
- Overhead and underground services
- Poles
- Meters, service drops, feeders
- Streetlights
- Customer service

General

- General plant and administrative and other general (Needs to be distributed to generation, transmission and distribution)



Cost of Service

Functionalization Transformation

- OPPD is undergoing a transformative period:
  - 1,000 – 1,500 MW of wind and solar
  - 125 MW of battery storage
  - 32+ MW of demand response
  - 600 – 950 MW of combustion turbines
  - 320 MW of added fuel capacity and fuel oil storage
- Changes in our generation mix, growing energy resource needs, and expansion in our residential, commercial, and industrial classes will result in the functionalized total costs evolving over time.
- OPPD will continue to monitor anticipated changes, economic changes, and other factors to maintain gradualism and rate stability.

Cost of Service

Step 2: Classification

- **Classification** identifies the drivers of the costs.
- Costs are generally split into three categories:
  - **Demand Costs**
    - Costs based on the customer's maximum demand
    - Measured in kilowatts (kW)
  - **Energy Costs**
    - Costs based on the customer's energy needs
    - Measured in kilowatt-hours (kWh)
  - **Customer Costs**
    - Costs based on the number of customers on the system
    - Measured using customer-months
- Portions of general plant and administration and general expenses are each categorized as energy-related, demand-related, and customer-related.

Cost of Service

Classification Demand-Related Costs

- Demand-related costs are costs that vary based on the size-related needs to serve a customer's maximum demand.
- All three functionalization categories have size-related needs.
  - Generation costs are the capacity built to meet maximum expected demand and the additional planning reserve margin.
  - Transmission costs are mainly size-related demand costs as transmission facilities transmit bulk power to load centers to meet maximum expected demand.
  - Distribution costs also have size-related demand costs including transformers and conductors to meet maximum expected demand. Customer classes do not have their maximum demands at the same times on the distribution system.

Cost of Service

Classification Energy-Related Costs

- The majority of energy-related costs are generation costs. While some generation assets are built for resiliency and peak demand, generation is also built to serve the energy needs of customers and portions are assigned to energy.
  - The split for generation assets between energy and demand will be discussed in detail below.
- Costs that vary with energy production are categorized as energy-related. Two major cost categories:
  - Fuel is classified entirely as energy-related as energy needs require the consumption on fuel.
  - Purchased power is generally classified as energy-related because power is purchased on the integrated marketplace when OPPD is short energy resources or when market prices are lower than OPPD's variable fuel costs.

Cost of Service

Classification Customer-Related Costs

- The majority of customer-related costs are distribution costs.
- Customer-related costs includes meters, customer billing, and portions of the distribution plant.
- The split between demand-related and customer-related distribution costs is determined by OPPD's minimum system approach.
- In 2022, OPPD reviewed the classification of its distribution system and enacted the minimum system methodology for its planning system. More information will be discussed in detail below.

Cost of Service

Classification Important Considerations

- Two important classification factor decisions are:
  - The split between demand-related and energy-related generation assets.
  - The split between customer-related and demand-related distribution assets.
- The best strategy for determining the classification approach in an embedded-cost approach is identifying cost causation and system planning.
- OPPD utilizes a load factor approach (a derivative of the “average and excess” approach) for the classification of generation assets.
  - OPPD performed a study considering 14 different demand classification approaches when determining the classification of generation assets.
- The load factor approach uses the system wide load factor to determine the proportion assigned to energy-related costs and the remaining portion is assigned to demand-related costs.
  - Rather than the traditional “excess demand” derivation for the demand-related allocation, the 4CP measure is used (more information provided in allocation section below).
- As previously mentioned, OPPD’s generation fleet will change considerably in the future. Additionally, the Inflation Reduction Act of 2022 has significantly impacted the business decisions regarding the owning of utility-scale renewable resources. OPPD will ensure that the classification of generation assets matches the transformation of the generation portfolio.

Cost of Service

Classification Important Considerations (Cont.)

- The classification of the distribution plant is another important consideration (particularly FERC accounts 364–370).
- OPPD has previously used the zero-intercept, but adopted the minimum system approach in 2022 determining it best represented OPPD's system planning.
  - The minimum system approach provides a more intuitive approach to determining the customer-related distribution costs as it assigns a minimum-sized unit cost as the customer-related portion and the remaining costs are assigned as demand-related.
- The minimum system approach was one of many classification, functionalization, and allocation refinements OPPD recently implemented in collaboration with our rate consultant Brattle.
  - These adjustments resulted in greater precision of cost recovery matching cost incurrence for demand, energy, and customer costs.

Cost of Service

Step 3: Allocation

- **Allocation** is the assignment of the classified costs to customer classes based on the relative proportion of their contribution to those costs.
- Allocation is the most critical step of a COSS as it determines the cost allocations for each customer class.
  - It is essential to understand the characteristics of each customer class, such as the number of customers, energy consumed, voltage-level, and their contribution to both coincident peak (CP) and non-coincident peak (NCP) demand.
- Each allocation method represents a set of relative proportions that total to 100% across all customer classes.
- There are multiple allocations used for the various classified costs:
  - Demand-related allocations
  - Energy-related allocations
  - Customer-related allocations

Cost of Service

Allocation Approaches

- Before discussing allocation approaches, it is worth noting certain customer classes will view some allocation approaches more favorably than others.
- OPPD's allocation approach is based on a set of measurable criteria that are universally adopted for determining the appropriateness of an allocation method.
- Some of these criteria include:
  - Measuring the precision of the method compared to the actual planning and operating of facilities.
  - Measuring the accuracy of the method to cost causation.
  - Assessing the ability of the method to recognize specific customer class characteristics, such as energy usage, peak demand, number of customers, etc.
  - Assessing the accuracy of the method to produce consistent results.
  - Reviewing the modernity of the method to reflect best practices across the industry.
- Adhering to these criteria, several methods can be appropriate. OPPD partners with Brattle to provide a balanced approach in selection of allocation methods.
- OPPD does not seek to influence a particular set of results when determining allocation factors.

Cost of Service
Allocation Methods

- Demand-related allocation methods:
  - Coincident peak demand (CP)
    - Also referred to as system peak demand (kW)
    - Depending on the nature of the CP, there are different measures of CP (4CP vs. 12CP)
  - Non-coincident peak demand (NCP)
- Energy-related allocation methods
  - Aggregate energy (kWh)
  - Considered both at point of generation and point of use to account for energy losses
- Customer-related allocation methods
  - Number of customers
  - Weighted customer measures:
    - Relative cost – meters, transformers, service lines, etc.
    - Effort required – customer service, billing, etc.
    - Ratio of service – transformers, connections, streetlights, etc.

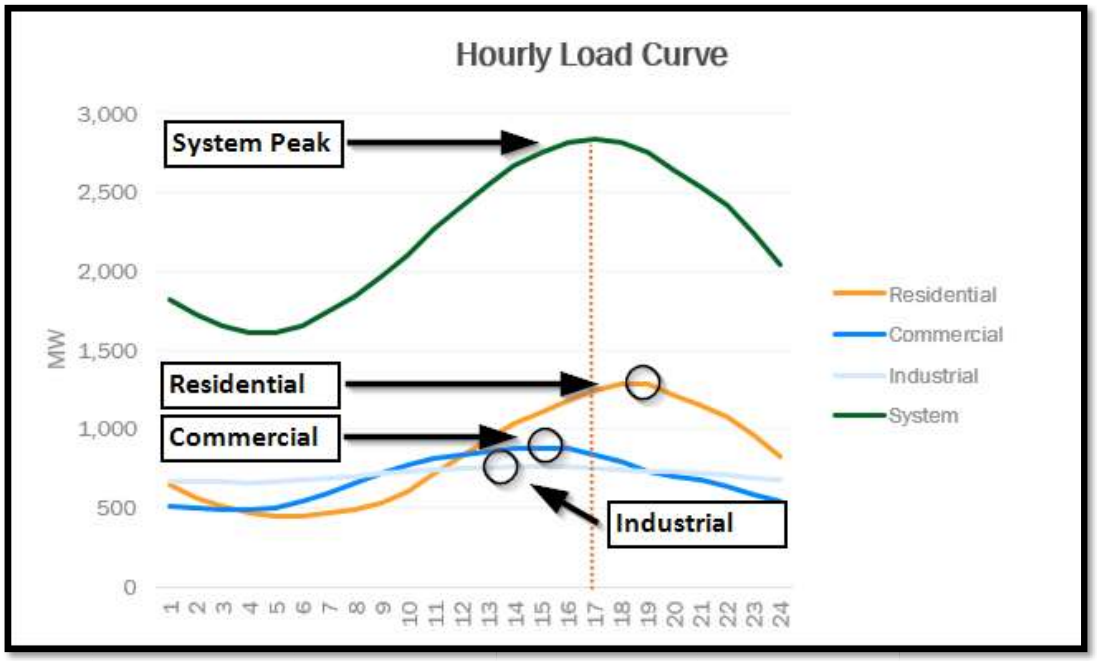
Cost of Service
Demand-Related Allocations

- Coincident Peak (CP) is the demand placed on the system by a customer class at the system peak.
- 4CP measures the CP contribution during the 4 highest months of the year.
  - These are the summer months of June – September for OPPD.
  - This method is used to allocate the demand-related production costs as our capacity and OPPD's resource adequacy requirement is currently driven by the summer peak. Note: resource adequacy requirements may change as SPP examines system resiliency requirements and may cause a need to reevaluate the 4CP allocation for demand-related production costs.
- 12CP measures the contribution during the system peak hour of each of the 12 months of the year.
  - These are averaged together to provide the 12CP measure.
  - 12CP is widely accepted in allocating transmission costs as it strikes a balance in reflecting the way the system has been planned and is used. This helps to maintain reliability and serve load accordingly.
- Non-coincident peak (NCP) refers to the demand placed on the system by each customer class at the point in time when that class reaches its individual peak demand (regardless of the system peak).
  - This measure is utilized for the allocation of distribution demand-related costs such as substations, which are built to meet the highest instantaneous peak demand regardless of the time of day.

Cost of Service

Load Curve

- The following graph provides an example of a daily load curve cycle and visually illustrates the concept of CP and NCP.
- The **circled points** for each class indicate the **NCP** for each class, while the intersection of each class line with the **dotted line** illustrates their contribution to the **CP** (system peak).
- None of the NCP's align with the CP. However, load variability is distinct between classes. In summer months, generally:
  - Residential peaks in the evening
  - Commercial peaks middle afternoon
  - Industrial peaks early afternoon
    - Industrial is relatively constant throughout the day
- Variability translates to different levels of utilization of system capacity. Load Factor measures utilization efficiency and is important for determining allocation of costs for each class.



Cost of Service

Load Factor

- Load Factor is a measure that captures variation in load.
- It is calculated as the ratio of average load by peak load:
  - $\text{Load Factor} = \frac{\text{Average Load}}{\text{Peak Load}}, [0,1]$
- Higher load factors indicate higher utilization over all hours of the day and year, which aligns well with baseload generation.
- Baseload generation typically has lower energy costs and higher load factor customers align well with baseload generation (leading to lower rate offerings).
- Differences in load factors can occur within rate classes and can merit different rate offerings based on different levels of utilization of the system.

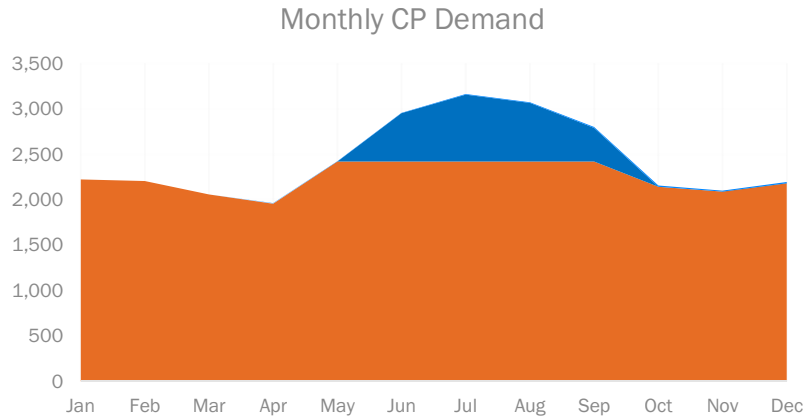
Cost of Service

Load Factor Impacts on Rates

- Rate 110 (Standard) and Rate 115 (Heat Pump) are both residential rates, but with different load profiles due to Rate 115 requiring an electric heat pump.
  - Rate 115 uses electricity both in heating and cooling of the household, yearly load factors are typically 35% higher than Rate 110 customers.
  - With more load used throughout the year, rates are lower and the average Rate 115 pays approximately 2.2 cents/kWh less than the average Rate 110 customer.
- Electrification of households will allow more efficient recovery of costs and illustrates how load factor is correlated with rates.
- Electrification of transportation can be utilized to increase load factors. Rate offerings will be evaluated to incentive recharging over night (off-peak periods), which would be beneficial to the system. However, if left unaddressed, customer load factors may worsen if charging occurs during on-peak periods.

Cost of Service

Generation Demand-Related Allocations



- OPPD utilizes a derivative of the average and excess approach for classification with the “excess demand” allocation method being 4CP.
- The rationale for utilizing 4CP is illustrated in the monthly peak load graph above.
  - The blue area represents the summer peak demand in excess of the non-summer peak demand (orange area).
  - Therefore, generation capacity and OPPD’s resource adequacy requirement is currently driven by the summer peak.

Cost of Service

Transmission Demand-Related Allocations

- Transmission costs are classified as entirely demand-related using the 12CP allocation.
- The 12CP allocation method is widely accepted as the most appropriate approach for allocation of transmission costs. This is due to the majority of utilities planning their systems to meet their 12 monthly peaks.
  - FERC uses 12CP in allocation of transmission costs.
  - SPP also relies on 12CP for allocation of fees from its members.

Cost of Service

Distribution Demand-Related Allocations

- The 1NCP allocation method is widely accepted and utilized as the distribution demand-related allocator.
  - Transformers, substations and other size-related distribution investments are generally designed for customer's maximum demand needs regardless of the system peak.

Cost of Service

Energy-Related Allocations

- There are several substantial cost categories allocated strictly on energy-related usage including:
  - Fuel
  - Purchased power
  - Portions of generation assets
- Energy is measured in usage at the meter, production at the facility, and adjusted for losses on the system (line, substation, transformer, etc.).
- OPPD captures where customers are located on the system and determines load losses at each interconnection level.
  - Customers interconnected at higher voltage levels have lower energy losses (industrial).
  - Customers interconnected at lower voltage levels have higher energy losses (residential).

Cost of Service

Energy-Related Allocations (Cont.)

- When customers use power is another important factor.
  - Fuel costs are different for different generation types.
  - Purchased power is higher during specific time intervals and seasons.
- Seasonality (summer vs non-summer) for residential and commercial classes provide a means of capturing time of consumption impacts.
- Advanced Metering Infrastructure (AMI) will further enable the ability to provide time-varying rates and better match cost recovery with incurrence.

Cost of Service

Customer-Related Allocations

- Customer-related allocation methods typically involve a weighted-measurement of the number of customers, which controls for variation in customer attributes.
- Customer-related allocation methods include measures such as:
  - Relative cost – meters, transformers, service lines, etc.
  - Effort required – customer service, billing, etc.
  - Ratio of service – transformers, connections, streetlights, etc.
- Customer-related costs are the smallest classified cost category.
- Distribution systems represent the most diverse functional component and require special attention to ensure proper classification and allocation.

Cost of Service

Transmission Level Market Access Rate Allocations

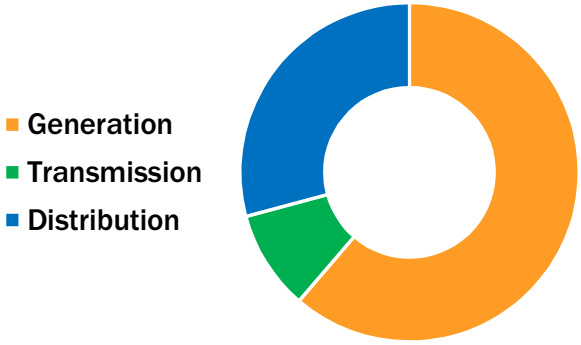
- Large Power – High-Voltage Transmission Level – Market Energy, Rate 261M, reflects a unique customer class and offering.
  - As required, customers are supplied at transmission level voltage 161kv or 345kV and own their own electric substation for the delivery of service.
  - In addition, customer's energy charge is equal to wholesale market prices for energy from the SPP for each hour and these prices are directly passed through to the customer.
- Rate 261M customers have unique allocation factor assignment in the energy components:
  - Each customer receives a direct assignment of the purchased energy costs at the market price.
- The interconnection level is considered in the allocation of functional components.
  - Interconnection at the transmission level avoids much of the distributional investments.
- This unique offering provides a shared risk and investment between the customer and the utility that requires specific allocation considerations.

Cost of Service

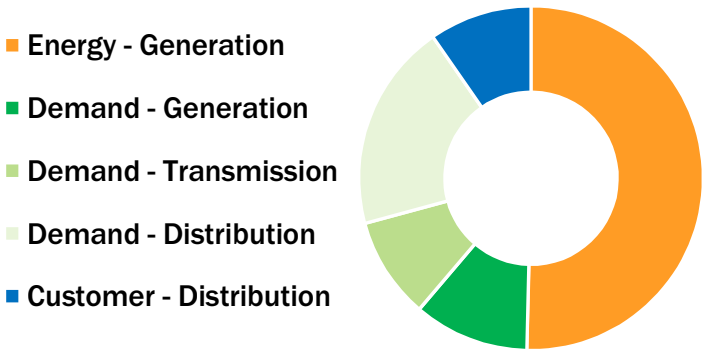
Summary of OPPD Cost of Service Allocations

- The following charts are examples of the proportion of the total costs to serve by functionalization, classification, and main allocation method.

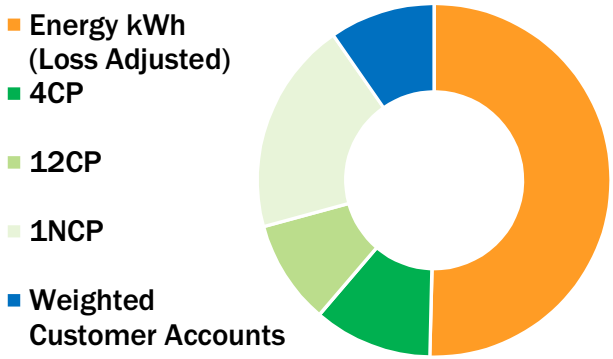
Functionalization



Classification



Allocation



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IV. Rate Design

Rate Design

Step 4: Rate Design

- The ultimate goal of the COSS is to fairly apportion costs among customer classes based on their proportionate contribution to the costs.
- After determining the total costs for each customer class, cost recovery is aligned with the fundamental rate elements/charges:
  - Demand Costs (Demand Charges)
    - Costs based on the customer's maximum demand
    - Measured in kilowatts (kW)
  - Energy Costs (Energy Charges)
    - Costs based on the customer's cumulative energy needs
    - Measured in kilowatt-hours (kWh)
  - Customer Costs (Service Charges)
    - Costs based on the number of customers on the system
    - Measured using customer-months

Rate Design

Demand Charges

- Demand charges are determined through dividing the demand-related costs by the billing demand (measured in kW).
- Demand charges include the size-related capacity costs of generation, transmission, and distribution.
  - Demand charges must be consistent with the collection method of demand meter data to ensure over/under collection does not occur.
- Demand charges seek to provide price signals to customers regarding instantaneous use costs and serve to more effectively recover demand-related costs based on peak contributions.
- When a class does not have demand metering technology, demand-related costs must be recovered either through:
  - The energy charge or
  - The service charge
- This is discussed below regarding 2-Part Rates vs. 3-Part Rates.

Rate Design
Energy Charges

- Energy charges reflect recovery of energy costs.
- Energy charges can take the form of both **Base Rates** and **Riders**.
  - **Base Rates** are charges set within the service regulations and approved by the Board.
  - **Riders** (sometimes referred to as “trackers”) are additional charges, not included in the base rates, that are designed to recover specific costs that the rider is “tracking,”
    - **Rider 461** - OPPD utilizes a Fuel and Purchased Power Adjustment Rider (FPPA) that recovers fluctuations in net power costs (fuel, purchased power, and off-system sales) outside of OPPD’s control. This rider ensures the base rates remain stable during volatility in the integrated marketplace while also providing an effective price signal to customers.
  - Energy charges can be structured in several different ways:
    - Seasonally – based on the time of year
    - Temporally – based on the time of day or week (AMI-enabled)
    - Volumetrically – based on the volume consumed (e.g. declining-block structures)

Rate Design

Service Charges

- Service charges are used to recover the costs of being a customer.
- Service charges are uniform for all customers taking service on a rate and do not vary based on size-related demand or energy needs.
  - Includes costs such as billing, customer service, meters, etc.
- Service charges are calculated as follows:
  - $\text{Service Charge} = \frac{\text{Customer Costs Allocated to Customer Class}}{\text{Number of Customers in Class} \times 12 \text{ Billing Months}}$

Rate Design

2-Part Rates vs 3-Part Rates

- OPPD's residential and small commercial classes lack the supporting infrastructure for demand charges. Therefore, demand-related costs are recovered through service charges and energy charges.
  - Rate offerings with only service charge and energy charges are referred to as **2-Part Rates.**
  - Rate offerings with an additional demand charge component are referred to as **3-Part Rates.**
- For these classes, the energy charge must recover not only energy costs but also generation, transmission, and distribution costs. Increasing diversity of customer needs has made it challenging to effectively recover fixed costs in the absence of time-of-use volumetric energy charges.
  - Customer class divergence includes:
    - Various forms of energy efficiency
    - Electrification of heating
    - Electrification of transportation
    - Customer-owned generation
- OPPD's 2-Part rate structures recovers portions of distribution demand-related costs and the customer-related costs within the service charge while demand-related generation, transmission, and part of distribution costs along with energy costs are recovered through the energy charges.
- OPPD's transition towards more effective price signaling will take a balanced approach over time.
  - In the interim, as we transition to AMI technology, OPPD will seek to align legacy rates with future price signals.
  - This will allow for stability and behavioral shifts in energy consumption that will mitigate transitional challenges.

Rate Design

Generally-Accepted Rate Principles

- There are some generally-accepted rate principles utilized within the electric industry, which include:
  - Customer bill stability
  - Simplicity, understandability, and transparency of rates
  - Rates that support healthy utility operations
  - Rates that promote efficient use and investments
  - Fairness in allocation among classes
- These principles must be properly understood to remain effective in the shifting landscape of energy, which includes:
  - Ongoing technological advancements
  - Growth in distributed energy resources (DER)

Rate Design

Transition Toward Effective Price Signals

- Utility planning has become increasingly sophisticated, and the ability to capture allocators based on more granular load and equipment data has enabled greater precision when determining class-level costs to serve.
- It is also important to adhere to the Efficient-Use Principle, which is defined as providing customers with effective price signals and information to manage their energy costs.
  - Appropriate changes in energy usage will result in a reduction in the costs allocated to them. For example, in the future with AMI-enabled technology, customer interactions will increase in app-based communications, which provide real-time cost savings estimates to encourage more efficient consumption.
- While high-load factor customers have historically matched baseline generation, as the industry moves increasingly towards intermittent renewable generation, customers with flexible demand will be key to the minimization of costs and therefore benefit from incentives and rate offerings.

Rate Design

Transition Toward Effective Price Signals (Cont.)

- AMI technology will be initiated over the next several years and will help OPPD to build more advanced and dynamic rate structures.
- Enabled by this technology, customers will have greater understanding of the drivers of their bill and better ability to respond to price-signals.
  - OPPD will be able to utilize data from AMI-metering to better serve our customers by coordination of customer profiles and usage data allowing for strategic engagement that address customer's needs and preferences.

Rate Design

Conclusion

- Rate design aligns cost recovery with the fundamental rate element – demand charges, energy charges, and service charges.
- Rate principles provide the guiding vision and long-term strategy to provide customers with greater flexibility, choice, transparency, gradualism, affordability, and fairness when determining rate offerings.
- The utility industry is experiencing rapid developments. Rate structures will need to be able to evolve to be more adaptable to the increasingly dynamic environment and leverage technology that will become available to better serve our diverse customer needs.
- OPPD will continue its partnership with both external entities and our customer-owners to provide affordable, reliable, and environmentally sensitive energy services to our customers.

EXHIBIT 15

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CLIENT/MATTER NUMBER
142173-0101

April 22, 2025

White & Case, LLP,
609 Main Street, Suite 2900
Houston, Texas 77002

RE: ***First Requests for Production of Documents in Connection with Zachry Holdings, Inc. et al. v. Omaha Public Power District (Adv. Pro. No. 25-03025 (MI))***

Dear Ms. Garr:

I am writing in response to your letter dated April 18, 2025, regarding Zachry's Voluntary Requests for Production of Documents.

As the Court has made clear, discovery is not currently open. OPPD does not believe that it is appropriate for Zachry to serve discovery requests while a motion to transfer venue remains pending and as we prepare to file an amended motion to dismiss. Attempting to initiate discovery at this stage is not only premature—it disregards the procedural posture of this case.

Even assuming the Court ultimately denies our forthcoming motion to dismiss, discovery would still be improper in this forum. The Southern District of Texas Bankruptcy Court is not the appropriate venue for this dispute, and OPPD will not voluntarily engage in discovery in this Court. Doing so would risk waiving significant objections to this venue.

Furthermore, Zachry's attempt to carve out limited discovery tailored solely to its own objectives is plainly self-serving. Discovery—when appropriate and in the proper forum—must encompass all relevant issues, not just those Zachry selectively identifies. The effort to control the scope and timing of discovery undermines the fairness of this process.

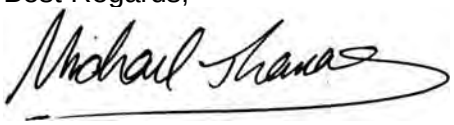
Zachry has repeatedly represented to the Court that the liquidated damages issue involves a straightforward legal issue suitable for early resolution via summary judgment. If that were truly the case, discovery would be unnecessary. The fact that Zachry is now seeking to open discovery only undercuts its own narrative and confirms that its claims are not as clear-cut as it has led the Court to believe.

We trust that this matter is now clear. Should you wish to discuss this further, please feel free to reach out.

EXHIBIT
H

FOLEY
FOLEY & LARDNER LLP

Best Regards,



Jonathan Michael Thomas

EXHIBIT 16

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

In Re:	§	Chapter 11
ZACHRY HOLDINGS, INC., et al.,[1]	§	Case No. 24-90377 (MI)
Debtor	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.	§	
Plaintiff,	§	
v.	§	Adversary No. 25-03025 (MI)
OMAHA PUBLIC POWER DISTRICT	§	
Defendant	§	

DECLARATION OF TANYA BODELL

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

1. I make this declaration in support of the Motion for Partial Summary Judgment on Liquidated Damages filed by Zachry Holdings, Inc., ("Zachry") in the above-named matter. I make the statements of fact in this declaration of my own personal knowledge, research, and analyses. If called as a witness in this proceeding, I could testify competently to the facts set forth herein.

2. I am a Partner with StoneTurn, a global professional services firm. I lead StoneTurn's energy and sustainability practice for business advisory, regulatory support, and litigation services. StoneTurn is a global advisory firm that provides consulting services, forensic accounting and investigative services, compliance and monitoring, data analytics, forensic technology, and litigation consulting services to companies, their counsel, and regulators. StoneTurn professionals serve clients from 14 global offices across five continents.[2]

[1] Zachry, https://zachrygroup.com/

[2] For more information, see StoneTurn's website: www.stoneturn.com. See StoneTurn, "Office Locations,"

3. For more than 30 years, I have advised market participants, new entrants, government officials, regulators, and lawyers on commercial, regulatory, and policy issues. For energy market participants and new entrants, I provide strategic advice informed by advanced analytics on asset valuation, investment strategy, mergers/acquisitions, restructuring, regulatory outreach, and market analysis. I also advise market participants, regulators, and market operators on competitive energy market design, and have led the development and application of energy market models to analyze each of the three wholesale electricity market interconnects in North America. I have analyzed energy and other commodity trade books during my career, including those of electric utilities, energy marketers, and financial firms engaged in physical and financial trading.

4. I provide independent expert testimony and support in restructuring, regulatory, and litigation cases pertaining to the energy industry, including assessment and valuation of benefits and damages claimed for breach of contract, fraudulent misrepresentation, and market manipulation, among other issues. I regularly provide industry insight, publish in industry journals, and speak on energy industry trends.

5. I received an MBA as a Sloan Fellow from Massachusetts Institute of Technology in 2008; a Masters in Public Policy from the Harris School of Public Policy, University of Chicago, *with honors*, in 1993; and a Bachelor of Arts Degree in Mathematical Economics from Pomona College, *magna cum laude*, in 1991.

6. I have the following current and prior energy affiliations:

   a) Northeast Energy Commerce Association, President Emeritus
   b) New England Women in Energy and the Environment, Member
   c) International Chamber of Commerce, Vice Chair, Center for Expertise
   d) Energy Bar Association, Non-legal Member
   e) Town of Cohasset, Alternative Energy Committee, Chair (2010 – 2013; 2019 – present); Advisory Committee (2013 – 2019)

7. **Exhibit A** provides my curriculum vitae, which summarizes these qualifications and professional experience, including testimony and articles published within recent years.

8. StoneTurn is compensated at an hourly rate of $795 for my services in connection with this matter. I am assisted by several StoneTurn professionals working under my direction. Neither StoneTurn's nor my compensation is dependent upon the conclusions reached in this matter or its outcome.

9. I have been asked to offer opinions on: (i) the scope of estimated economic damages incurred by Omaha Public Power District ("OPPD") from delay in "Substantial

Accessed: October 30, 2024; StoneTurn, "Practice Areas," Accessed: October 30, 2024.

Completion"[3] of the Turtle Creek Station and Standing Bear Lake Station (individually referred to as "Facility" and collectively "the Facilities"); (ii) whether economic damages were readily ascertainable when Amendment No. 2 was executed; (iii) how potential economic damages from delay in Substantial Completion of the Facilities could have been determined when Amendment No. 2 was executed; and (iv) to provide a forward-looking estimate of anticipated economic damages starting at the updated Guaranteed Substantial Completion Date in Amendment No. 2, as of the date when that amendment was signed.

10. In developing my opinions, I have relied on: (i) my education, training, and professional experience; (ii) information produced by Zachry in this matter; (iii) information obtained through independent research, peer-reviewed articles, and other publicly-available sources; and (iv) industry data, including electricity and natural gas prices.

11. I understand that Zachry has requested, but not received, information from OPPD concerning its electricity purchases and other actions taken to address peak demand during the delay in Substantial Completion of the Facilities. If and as additional information becomes available, I reserve the right to modify or supplement my opinion and this declaration accordingly.

I. Executive Summary

12. OPPD is a publicly-owned electric utility and political subdivision of the state of Nebraska. As a public power district, OPPD supplies electricity to the residents, businesses, and government entities located in its service territory. In order to meet its electricity supply obligations, OPPD procures power products and services from third parties, including the Southwest Power Pool ("SPP"), and operates its own power plants to provide those products, such as electrical energy, capacity, and ancillary services (in combination referred to as "Electricity Products").

13. SPP is an Independent System Operator ("ISO") that operates a high voltage transmission system and centralized markets for Electricity Products, in the central United States, and serves parts of Nebraska, including Omaha. OPPD is a market participant in the SPP system.[4]

14. As a general matter, electricity must be generated and consumed across a transmission system instantaneously. The integrity of the power grid relies on SPP to balance supply and demand; failure to do so results in outages and an unreliable system. In order to ensure there is sufficient power generation available to meet peak demand, SPP imposes generation capacity reserve requirements on each of the load serving entities that rely on the SPP system for supply.[5] Starting in 2023, OPPD was required to maintain Planned

[3] Substantial Completion is defined in the original EPC Contract, Article II, p. 6. Liquidated Damages are defined as a charge per calendar day delay in the event Guaranteed Substantial Completion Date is not achieved.

[4] SPP, https://www.spp.org/about-us/members-market-participants/

[5] SPP, 2024 SPP Resource Adequacy Report, p. 2.

Reserve Margins ("PRM") at least equal to 15 percent of its customers' peak demand for electricity.[6] In order to meet the PRM for its projected electricity load obligations, OPPD regularly has to make the decision of whether to buy or build new generation capacity.[7]

15. In September 2021, OPPD entered into an Engineer, Procure, and Construct Contract ("Original EPC Contract") with Zachry to build two separate power generating stations:

1) Standing Bear Lake Station, consisting of nine reciprocating engines totaling 150 MW;[8] and

2) Turtle Creek Station, consisting of two combustion turbines totaling 450 MW.[9]

16. OPPD stated that it expected each power station to operate only 15 percent of the time,[10] during periods when electricity demand is the highest, referred to as peak periods of demand. This expected level of operation is best suited for the chosen generation technologies, which are more widely used as intermediate or peaking units as opposed to baseload units that have a more efficient heat rate and would be more economic to operate most of the time.

17. For each of the Facilities, the Original EPC Contract specifies a Guaranteed Substantial Completion Date and liquidated damages for delays ("Liquidated Damages") if the station is not online by that date. Amendment No. 1, entered into on November 9, 2023, extended the Guaranteed Substantial Completion Dates and increased the daily charge for delay. During Zachry's bankruptcy negotiations, Zachry and OPPD entered into Amendment No. 2 to the Original EPC Contract on August 1, 2024,[11] which extends the Guaranteed Substantial Completion Date further from the original and amended provisions, and increases the daily charge for delay to levels above those established by Amendment No. 1.

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https://www.spp.org/documents/71804/2024%20spp%20june%20resource%20adequacy%20report.pdf

[6] OPPD, https://www.oppdcommunityconnect.com/power-with-purpose

[7] This obligation and planning requirement is required for nearly all load serving entities across power systems around the world. As a result, there are standard industry practices for projecting the economics of alternative resources and electric utilities regularly engage in integrated planning studies that project future demand for electricity and analyze alternative resource investments that could meet that demand going forward.

[8] OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station

[9] OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station

[10] Ibid.

[11] IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION In re: ZACHRY HOLDINGS, INC., *et al.*,1 Debtors., Chapter 11, Case No. 24-90377 (MI) (Jointly Administered), OMAHA PUBLIC POWER DISTRICT'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM, Case 24-90377 Document 2176 Filed in TXSB on 02/14/25, p. 5.

18. I understand that, as of the date of this report, the Facilities are connected to the SPP transmission system and able to operate,[12] but have not been granted a certificate of Substantial Completion by OPPD. OPPD claims that the Liquidated Damages provisions apply and, in a filing to the bankruptcy courts, provided a calculation from the contracted start dates to February 15, 2025 totaling $38 million.[13] This value does not incorporate the accelerated Liquidated Damages provision for Turtle Creek effective on February 15, 2025 that would increase the Liquidated Damages to 10 percent of the total Second Amended EPC contract cost, or around $42.8 million for Turtle Creek Station alone.

19. If the Liquidated Damages provisions are carried forward, the combined cap of 15 percent of the Second Amended EPC Contract value would apply before Standing Bear Lake Station would reach its cap on Liquidated Damages.

20. By my calculation, the overall Liquidated Damages cap of 15 percent of the Second Amended EPC Contract value, or $64.3 million, was reached on February 20, 2025.[14]

21. I have analyzed the Liquidated Damages provisions as well as the estimated economic damages that OPPD has incurred since the contractual start date through the filing of this report. My opinions are as follows:

    1) **Liquidated Damages significantly exceed estimated economic damages that OPPD incurred:** The Liquidated Damages provisions represent an implied rate that is much higher than the estimated damages incurred by OPPD, and is not a reasonable estimate of economic damages.

    2) **Amendment No. 2 pushed Liquidated Damages even further away from underlying economic fundamentals.** The fact that the daily charge for the liquidated damages provisions increased by $100,000 per day when moving from a start date in May 2023, right before the peak season, to December 2024, when the plants would be less likely to operate, indicates an even more extreme separation from economic damages conditions that OPPD would be expected to incur.

    3) **The implied energy and capacity prices in the Liquidated Damages provisions are exorbitantly high:** The daily charge for Liquidated Damages is not a reasonable estimate of the market price for energy that would have been generated by the Facilities, or the value of additional generation capacity that the Facilities would provide to meet

[12] OPPD website, https://www.oppdcommunityconnect.com/standing-bear-lake-station/news_feed/update-april-8-2025; OPPD website, https://www.oppdcommunityconnect.com/turtle-creek-station/news_feed/april-9-2025-update-2

[13] Ibid.

[14] I have not analyzed and have not formed any opinions on allocation of or responsibility for delay, including what portion, if any, of the liquidated damages are allocable to delays caused by Zachry, OPPD or any other third parties. To avoid debate about attribution, I estimate damages for the entire period of delay for the Facilities for comparison to the Liquidated Damages for that same period.

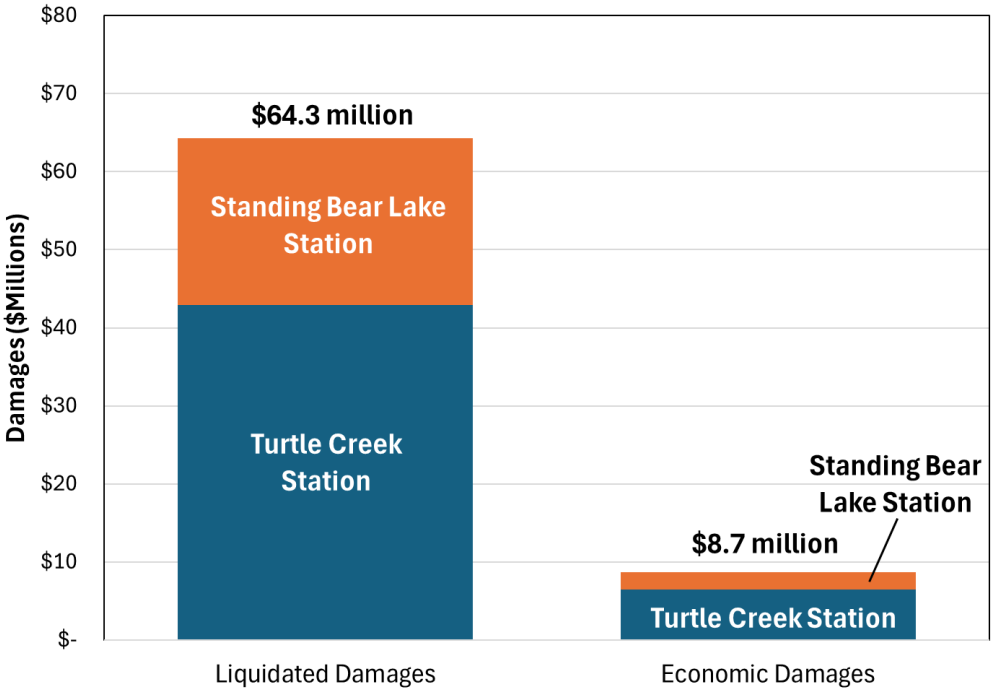
OPPD's reserve requirements. The price for Electricity Products implied by the daily charge for Liquidated Damages indicate a disconnect from the economic value of a delay in Substantial Completion.

4) **Liquidated Damages do not reflect the estimated economic damages OPPD incurred:** OPPD may have incurred damages based on the difference in value between what the Facilities would have provided to OPPD if they had been operational versus the replacement costs of the Electricity Products that OPPD had to purchase (or did not have excess to sell) in the absence of the Facilities being Substantially Complete. However, the Liquidated Damages do not reflect or provide a reasonable estimate of the lost economic value of the Facilities.

5) **Economic damages incurred by OPPD are straightforward to estimate.** I calculate damages based on publicly-available information on market prices to estimate the value of the Electricity Products that OPPD had to procure due to the delayed operations of the Facilities. Public information on fuel costs and variable operations and maintenance costs also are available to estimate what OPPD would have spent if the Facilities had been operational. I have used this approach to calculate damages in multiple cases where power generating facilities were delayed or cancelled. It is an accepted methodology for calculating such damages tied to the incremental costs incurred by OPPD had the Facilities been Substantially Complete by the Guaranteed Substantial Completion Date.

6) **Liquidated Damages are over 700% higher than economic damages.** Using this standard industry methodology, I calculate estimated damages for the period December 17, 2024 through April 15, 2025. Under this methodology, I estimate economic damages to be $8.7 million, significantly less than Liquidated Damages, which are at the contractual cap of $64.3 million -- over 7 times the damages that OPPD incurred due to the delayed start date. This value can be easily updated to reflect the period ending when the Facilities receive their certificate of Substantial Completion in accordance with the Second Amended EPC Contract (**Figure 1**).

Figure 1: Liquidated Damages vs Economic Damages (December 17, 2024–April 15, 2025)[15]



7) **OPPD should have been able to project anticipated economic damages using standard industry practices.** Electricity industry market participants, including OPPD, regularly project the economics of alternative buy versus build decisions. Every five years, OPPD has produced an Integrated Resource Plan that incorporates such calculations to choose whether to buy or build new plants.[16] Market operators, including the Southwest Power Pool ("SPP") regularly use projections of the cost of new entry and projected energy and ancillary services revenues to calculate the net cost of new entry. Assessing the value of a power plant as the difference between the market value of its Electricity Products versus the production cost to produce those Electricity Products (i.e., net revenues or operating margins) is a common practice in the industry.[17] I would be very surprised if OPPD does not perform similar types of

[15] Damages for Turtle Creek starts on December 17, 2024 and for Standing Bear Lake on December 31, 2024 per the Guaranteed Substantial Completion Dates in the Liquidated Damages provisions in the Second Amended EPC Contract.

[16] OPPD, 2016 OPPD Integrated Resource Plan, p. 12, https://www.oppd.com/media/318210/2016-oppd-integrated-resource-plan.pdf; OPPD, 2021 OPPD Integrated Resource Plan, p. 10, https://www.oppd.com/media/245413/oppd-integrated-resource-plan.pdf. I understand that OPPD currently is engaged in a new integrated resource planning process to project its procurement needs for the next twenty years.

[17] A regular estimate of net revenue is the spark spread, which represents the difference between energy prices and the cost of natural gas to produce that energy.

calculations or hire third parties to perform these types of projections and valuations as part of its planning processes to decide whether to buy versus build new power plants.

8) **Projected economic damages as of August 1, 2024, for the period of December 17, 2024 through April 15, 2025, are higher than estimated damages given various disruptions to the marketplace (e.g., pandemic, war and supply chain shocks), but substantially lower than Liquidated Damages for the same period.** Using market prices for energy, ancillary services, and capacity as set through centralized and bilateral markets, a reasonable estimate of potential damages can be developed based on information known or knowable the date that Amendment No. 2 was signed. Using this ex-ante approach results in projected economic damages of $15.2 million, well below what the Liquidated Damages calculation would be for the same time period.

22. Additional detail supporting my opinions is provided in this declaration and in the exhibits attached to this declaration. **Exhibit B** provides a list of documents relied upon and/or considered. **Exhibit C** includes a list of acronyms used within this report. **Exhibit D** describes the methodology used to calculate damages in more detail. **Exhibit E** summarizes the assumptions used in the calculation of damages.

II. Background

23. This section provides context that serves as the basis for my methodology and assumptions. The following is my understanding of the timeline of events, motivation for OPPD to enter into the Original EPC Contract, the technical specifications for the Facilities, and the provisions of the Second Amended EPC Contract that changed the Guaranteed Substantial Completion Date and daily charge for delay in meeting the Guaranteed Substantial Completion Date.

24. OPPD is responsible for supplying electricity to its approximately 413,500 electric utility customers (almost 1 million people), most of which are residential.[18] As a public power district, OPPD can service only electrical load within its service territory. The OPPD service area extends beyond just Omaha, covering a 13-county, 5,000-square mile service area in southeast Nebraska that includes the City of Omaha and adjacent territories, including the community of Carter Lake, Iowa.[19] OPPD publishes an annual report that describes its resources and resource requirements, as well as its financial position.[20] As a

[18] OPPD, 2024 Annual Report, "Building Our Legacy," Inside Cover, p. 0 and p. 94, https://www.oppd.com/media/320606/entire-2024-annual-report.pdf

[19] OPPD, 2021 Integrated Resource Plan, p. 8. OPPD's service territory includes the city of Omaha, Nebraska and adjacent territory comprising all of Douglas, Sarpy and Washington counties, along with portions of Cass, Saunders, Dodge, Otoe, Nemaha, Johnson, Paynee, Richardson, Burt and Colfax counties, as well as Carter Lake, Iowa which is connected to OPPD's Omaha distribution system.

[20] See for example, OPPD 2024 Annual Report, https://www.oppd.com/media/320606/entire-2024-annual-rport.pdf; OPPD 2023 Annual Report, https://www.oppd.com/media/319683/2023-entire-annual-report.pdf; and OPPD 2022

public power district, OPPD is governed by an elected board of eight directors[21] and is not subject to federal or state regulatory commission oversight with respect to its tariffs. That said, OPPD is required to meet certain reporting requirements at the state and federal levels, as well as with respect to its role as a market participant in SPP.[22]

25. OPPD is registered for a number of different functions with the North American Electric Reliability Corporation ("NERC"), including Distribution Provider ("DP"), Generator Owner ("GO"), Generator Operator ("GOP"), Resource Planner ("RP"), Transmission Owner ("TO"), Transmission Operator ("TOP"), and Transmission Planner ("TP").[23]

26. As an RP, OPPD is "The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific Loads (customer demand and energy requirements) within a Planning Authority area."[24] In this role, OPPD has the obligation to ensure it has sufficient supply of electricity to meet its load supply obligations.[25] Sufficient supply usually is measured in terms of meeting required reserves above and beyond peak load requirements. OPPD meets its load obligations through its own generation resources[26] and as a market participant in SPP.[27]

27. As an ISO, SPP is similar to the Electric Reliability Council of Texas ("ERCOT"), which operates the electric grid for the geographic area to the south of SPP[28], and the Mid-Continent Independent System Operator ("MISO"), which is responsible for the area to the east of SPP. Unlike ERCOT which operates in a single state, however, SPP operates an electricity transmission system serving all of the states of Kansas and Oklahoma, as well as portions of North Texas, Nebraska, Arkansas, Iowa, Louisiana, Minnesota, Missouri, Montana, New Mexico, North Dakota, South Dakota, and Wyoming. In its role as electric

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Annual Report, https://www.oppd.com/media/318975/2022-entire-annual-report.pdf.

[21] OPPD, 2024 Annual Report, Inside Cover, p. 0.

[22] OPPD, Service Regulations & Schedules, https://oppd.com/media/172612/oppd-rate-manual.pdf; OPPD, 2024 Annual Report, https://www.oppd.com/media/320606/entire-2024-annual-report.pdf

[23] NERC, NERC Active Compliance Registry Matrix as of April 22, 2025,https://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NERC_Compliance_Registry_Matrix_Excel.xlsx

[24] NERC, "Appendix 5B, Statement of Compliance Registry Criteria (Revision 8)," Effective: June 27, 2024, www.nerc.com/AboutNERC/RulesOfProcedure/Appendix%205B%20eff%2020240627_signed.pdf

[25] Ibid., p. 6.

[26] OPPD, 2021 Integrated Resource Plan, Table 5-10 Load and Capability Report - Summer Peak (MW), p. 57, https://www.oppdcommunityconnect.com/irp

[27] SPP, https://www.spp.org/about-us/members-market-participants/ See also FERC approval of SPP's imposition of responsibility for maintaining adequate reserves on LREs at 184 FERC ¶ 61,207, at P 6 (2023), https://www.spp.org/documents/70245/20230929_order%20setting%20aside%20prior%20order%20in%20part%20-%20complaint%20regarding%20planning%20reserve%20margin_el23-40-001.pdf

[28] ERCOT, https://www.ercot.com/news/mediakit/backgrounder

system operator, SPP also functions as the market operator and coordinates centralized markets for Electricity Products, including electrical energy and the ancillary services required to support the high-voltage transmission system that delivers energy from generators to load. A variety of market participants buy and sell their electricity services through SPP, including generators and load responsible entities ("LREs") such as OPPD.[29]

28. LREs in SPP, including OPPD, are responsible under the SPP Open Access Transmission Tariff ("OATT") to "maintain adequate capacity to meet its Resource Adequacy Requirement (RAR)" for the peak summer season.[30] OPP is required to procure and maintain sufficient resources to meet its "RAR" -- a minimum level of reserve requirements sized to its load obligations.[31] Reserve requirements are based on the peak load requirements of their customers plus a defined reserve margin (e.g., 15 percent) above and beyond that peak demand. Reserve margins can be met with generation capacity that is either owned by an LRE or purchased from a third party.

29. As part of its system planning, OPPD decided to build new generation projects to meet its RAR.[32] OPPD put out a request for proposal in 2019, to which Zachry responded and was awarded the EPC Contracts for what are now referred to as the Standing Bear Lake Station and Turtle Creek Station.[33]

30. In its 2021 Integrated Resource Plan, OPPD identifies "Standing Bear" and "Turtle Creek" as providing 597 MW of peak generating capacity to contribute to its Planned Reserve Margin ("PRM"), which is projected to be slightly above 15.1 percent by 2024 (assuming the Facilities came online as originally planned).[34] At the time of the Integrated Resource Plan, SPP required 12 percent reserve margins,[35] which SPP has since increased to a 15 percent PRM in effect as of 2023.[36] In August 2024, SPP's Regional State Committee and

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[29] SPP, "2024 SPP Resource Adequacy Report," Published on June 14, 2024, p. 37, www.spp.org/documents/71804/2024%20spp%20june%20resource%20adequacy%20report.pdf

[30] Ibid., p. 2.

[31] OPPD The Wire, https://oppdthewire.com/southwest-power-pool-oppd/#:~:text=SPP%20increased%20the%20planning%20reserve,15%25%20in%20the%20coming%20years; SPP, 2017 Resource Adequacy Report, p. 2, https://www.spp.org/documents/52237/june%202017%20resource%20adequacy%20report.pdf; SPP Attachment AA of SPP Tariff, p. 12, https://spp.org/documents/58597/attachment%20aa%20tariff.pdf.

[32] OPPD, https://www.oppdcommunityconnect.com/generation; OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station; OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station.

[33] OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station?tool=qanda; OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station.

[34] OPPD, 2021 Integrated Resource Plan, p. 57, https://www.oppdcommunityconnect.com/irp.

[35] Ibid., p. 29. SPP, 2017 Resource Adequacy Report, p. 2, https://www.spp.org/documents/52237/june%202017%20resource%20adequacy%20report.pdf..

[36] Ibid., p. 1. SPP, 2023 Resource Adequacy Report,

board approved a minimum PRM requirement of 16 percent for the summer and a 36 percent winter-season PRM.[37]

31. The Facilities provide OPPD with capacity reserves, but are only expected to operate during peak demand periods.[38] OPPD indicates that the Facilities are expected to operate 15 percent of the time.[39] Given that SPP is a summer peaking system,[40] I would expect that most of the production would occur during the summer months, with occasional production in the winter during extreme winter events.[41]

32. A summary of the specific characteristics for each of the Facilities are summarized below (**Figure 2**).

https://www.spp.org/documents/69529/2023%20spp%20june%20resource%20adequacy%20report.pdf; SPP, https://spp.org/documents/68838/20230216_deficiency%20response%20-%20revisions%20to%20add%20a%20process%20to%20allow%20an%20exemption%20of%20the%20deficiency%20payment_er23-636-001.pdf

[37] SPP, "SPP board approves new planning reserve margins to protect against high winter, summer use," August 6, 2024, www.spp.org/news-list/spp-board-approves-new-planning-reserve-margins-to-protect-against-high-winter-summer-use/

[38] "The units are intended to provide reliability to the system and are expected to operate at low capacity factors . . ." OPPD, 2021 Integrated Resource Plan, p. 3.

[39] OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station; OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station

[40] NERC, 2024 LTRA, pp. 55 – 59, "SPP peak load occurs during the summer season," p. 58, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf;

[41] SPP, "State of the Market Summer 2024," Published October 29, 2024, Updated October 31, 2024, Figure 2-1, p. 4, www.spp.org/documents/72602/spp_mmu_qsom_summer_2024_v2.pdf; OPPD, https://oppdthewire.com/high-el,ectric-bill-saving-tips-2/.

Figure 2: Facility Specifications

Characteristics	Standing Bear Lake Station	Turtle Creek Station
Number of Units	9	2
Capacity per Unit	16.7 MW	225 MW
Total Capacity[42]	150 MW	450 MW
Primary Fuel	Natural Gas	Natural Gas
Decarbonization Potential	15% hydrogen/gas blend	30% hydrogen/gas blend or biodiesel fuel
Technology	Reciprocating Internal Combustion Engines (RICE)	Simple Cycle Combustion Turbines
Brand	Wärtsilä 18V50DF RICE	Siemens Energy, Inc. SGT6-5000F CTs
Heat Rate[43]	6,500 – 8,500 mmBtu/MWh	8,000 – 10,000 mmBtu/MWh
Other	Fast start-up capability	Fast start-up capability

III. Liquidated Damages Provisions

33. In this section, I address the Liquidated Damages provisions and why they fail to reflect a reasonable estimate of economic harm from the delay of Substantial Completion of the Facilities

34. The Original EPC Contract, Amendment No. 1, and Amendment No. 2, each include Liquidated Damages provisions for each of the Facilities tied to failure to meet the Guaranteed Substantial Completion Date by Facility. These provisions include a daily charge for each day of delay, with Liquidated Damages capped by a percentage of the total contract cost (10 percent per Facility; 15 percent for both combined).

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[42] The values reported by OPPD on its website and in its 2021 Integrated Resource Plan are slightly lower than the winter and summer rated capacity listed in the SPP Interconnection Queue:

Standing Bear Lake Station: 9 units at 18.84 MW each = 169.56 MW

Turtle Creek Station: 2 units at 255 MW each = 510 MW

SPP, Interconnection Facilities Study Report, GEN-2020-043, September 2022, GEN-2020-043 Facility Study FINAL.pdf

For purposes of calculating economic damages, I use the capacity values cited by OPPD.

OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station; OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station; OPPD. 2021 Integrated Resource Plan, https://www.oppdcommunityconnect.com/irp

[43] The thermal guarantees are redacted in the contracts. This range reflects a generalized range for the technology type as reported by Enerdynamics, Energy Knowledgebase, https://energyknowledgebase.com/topics/heat-rate.asp

35. Under Amendment No. 2, one month after the Guaranteed Substantial Completion Date, the Liquidated Damages daily rate ratchets up. Another month after that, an acceleration provision increases Liquidated Damages for each Facility up to the cap. In my opinion, the round-numbered increase of $100,000 per Facility in the daily delay charge and allowance for only two months of delay under Amendment No. 2, regardless of market conditions when the delay occurs, completely disconnects the Liquidated Damages provisions from economic harm actually incurred by OPPD. As a result, the Liquidated Damages provisions, on their face, are an unreasonable way to estimate economic damages.

36. On May 21, 2024, Zachry filed for bankruptcy protection under Chapter 11, Title 11 of the United States Bankruptcy Code.[44] Chapter 11 allows for a company to reorganize its debts while continuing operations.[45] As part of the bankruptcy proceedings, Zachry and OPPD renegotiated the EPC Contracts, resulting in Amendment No. 2 to the EPC Contracts.[46]

37. Amendment No. 2 delays the Guaranteed Substantial Completion Date from August 2024 (as provided for in Amendment No. 1) to December 2024, and increased the daily values for liquidated damages substantially,[47] as summarized in **Figure 3**.

[44] Zachry, Notice of Chapter 11 Bankruptcy Case, https://veritaglobal.net/zhi/document/24903772405210000000000045.

[45] 11 USC Ch. 11: Reorganization, https://uscode.house.gov/view.xhtml?path=/prelim@title11/chapter11&edition=prelim

[46] Second Amendment, as referenced in IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION In re: ZACHRY HOLDINGS, INC., *et al.*,1 Debtors., Chapter 11, Case No. 24-90377 (MI) (Jointly Administered), OMAHA PUBLIC POWER DISTRICT'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM, Case 24-90377 Document 2176 Filed in TXSB on 02/14/25, p. 5.

[47] Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations, Contract No. 263406, September 21, 2021; Amendment No. 2 to Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations (Contract No. 263406), p. 4.

Figure 3: Comparison of Liquidated Damages Provisions Before and After Renegotiation

Characteristics	Original EPC Contract[48]		Amendment No. 1[49]		Amendment No. 2[50]	
Project Name	**SBLS**	**TCS**	**SBLS**	**TCS**	**SBLS**	**TCS**
Liquidated Damages	Daily Rate					
First Stage	$125,000	$50,000	$225,000	$150,000	$350,000	$250,000
Second Stage	$250,000	$100,000	$350,000	$200,000	$500,000	$400,000
Liquidated Damages Cap	10% of EPC Cost per Facility; 15% for both		10% of EPC Cost per Facility; 15% for both		10% of EPC Cost per Facility; 15% for both	
Contract Price	$366,207,836		$428,741,118		$428,741,118	
Guaranteed Substantial Completion Date	05/01/23	08/18/23	08/08/24	08/30/24	12/30/24	12/16/24
Second Stage Start	05/16/23	09/02/23	08/24/24	09/15/24	01/30/25	01/16/25
Acceleration Date	None	None	12/20/24	12/20/24	03/01/25	02/15/25

38. On February 14, 2025, OPPD filed a submission to the Bankruptcy Court that calculated Liquidated Damages from December 17, 2024 up to, but not including, February 15, 2025 for each of the Facilities.[51] OPPD's calculation of Liquidated Damages for this period totals $38 million.[52] If the period is extended one more day, Liquidated Damages for Turtle Creek Station would have increased to $42.9 million, due to the acceleration provision in the Liquidated Damages calculation. Extending the Liquidated Damages provisions forward, indicates that the combined cap of 15 percent of total contract value (i.e., 0.15 x $428.7 million = $64.3 million) was reached around a week later on February 21, 2024 (**Figure 4**).

[48] Ibid. Original EPC Contract, Article IV, Article XI, Exhibit E.

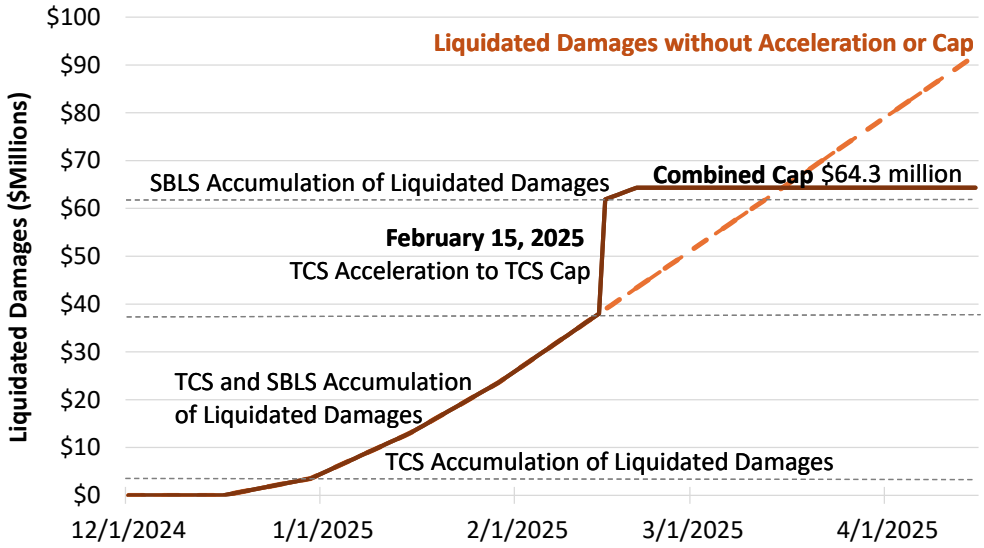
[49] Amendment No. 1 to Contract No. 263406, Para. 5, Exhibit E.

[50] Ibid. Amendment No. 2, Para. 7, Para. 8.

[51] OPPD Application for Allowance of Administrative Expense Claim, Case No. 24-90377, Document 2176. This calculation goes through February 14, 2024 and stops at the point where accelerated damages would have occurred for Turtle Creek Station. If the analysis had used the proper dates, I calculate that the total would have included the acceleration date and Liquidated Damages would have been $61.9 million instead of their filed claim for $38.0 million.

[52] Ibid. In stopping the calculation at the end of February 14, 2025, the calculation excludes the acceleration of Liquidated Damages to the cap for Turtle Creek Station.

Figure 4: Liquidated Damages for the Facilities at Different Dates per Amendment No. 2



39. To assess how the Liquidated Damages daily delay charge compares to economic damages, I calculated the implied price in the new Liquidated Damages Provisions for two Electricity Products: (i) energy; and (ii) capacity. I then compare those values to market prices during the damages period as described in more detail below.

1) **Implied Energy Value:** I calculate the implied value for energy by taking the daily rate for Liquidated Damages after the first month and dividing by the average anticipated daily energy production (assuming a 15 percent capacity factor). The use of a 15 percent capacity factor for the winter months likely understates that value given that the SPP peak period, when the Facilities would operate the most, is likely to occur in the summer months.

2) **Implied Capacity Value:** I calculate the implied capacity value of each Facility by taking the daily delay charge and dividing by the total nameplate capacity of the Facilities converted to kilowatts per month.

Figure 5 displays the value of capacity and energy implied by the Liquidated Damages daily rate after the first month of delay.

Figure 5: Implied Price for Energy and Capacity in the Liquidated Damages Value

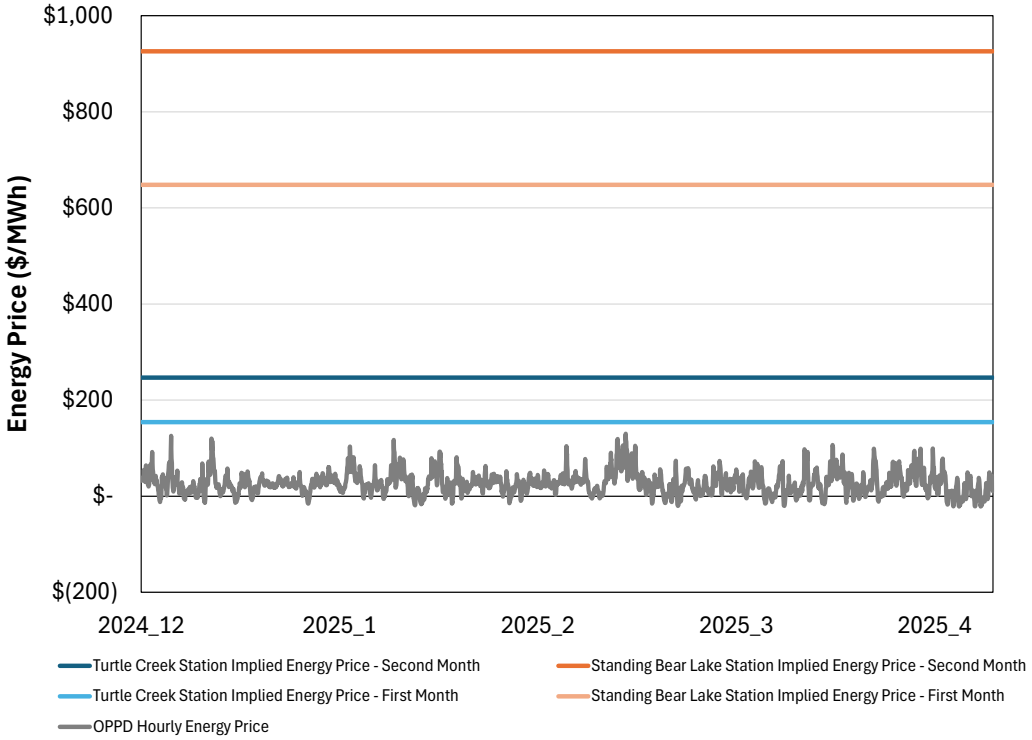
Characteristics	**Amendment No. 2**	
Project Name	**Standing Bear Lake Station**	**Turtle Creek Station**
Liquidated Damages Daily Rate After the First Month of Delay	$500,000	$400,000
Implied Energy Price ($/MWh)[53]	$919	$251
Implied Capacity Price ($/kW-month)	$100	$28

40. The implied energy and capacity prices in the daily rate for Liquidated Damages are significantly higher than the market value for those Electricity Products.

41. As shown in **Figure 6**, the implied energy price, assuming only revenues from energy production) in the Liquidated Damages price is well above any hourly price for energy in the SPP market for the delay period from December 2024 through February 2025. The blue line represents the hourly price for electrical energy being traded in SPP during the damages period. The gray lines represent the implied energy price ($/MWh) in the Liquidated Damages daily rate for Standing Bear Lake Station (first month and thereafter). The orange lines represent the implied energy price ($/MWh) for Turtle Creek (first month of delay and thereafter). The fact that the orange and gray lines are so much higher than the actual energy price settled in SPP at the OPPD load node indicates how disconnected from economic damages the liquidated damages provisions are.

[53] This calculation assumes a 15 percent average capacity factor, which is conservative and likely to result in a lower implied energy rate for the winter period when the Facilities would not be expected to operate as much as in the summer peaking season.

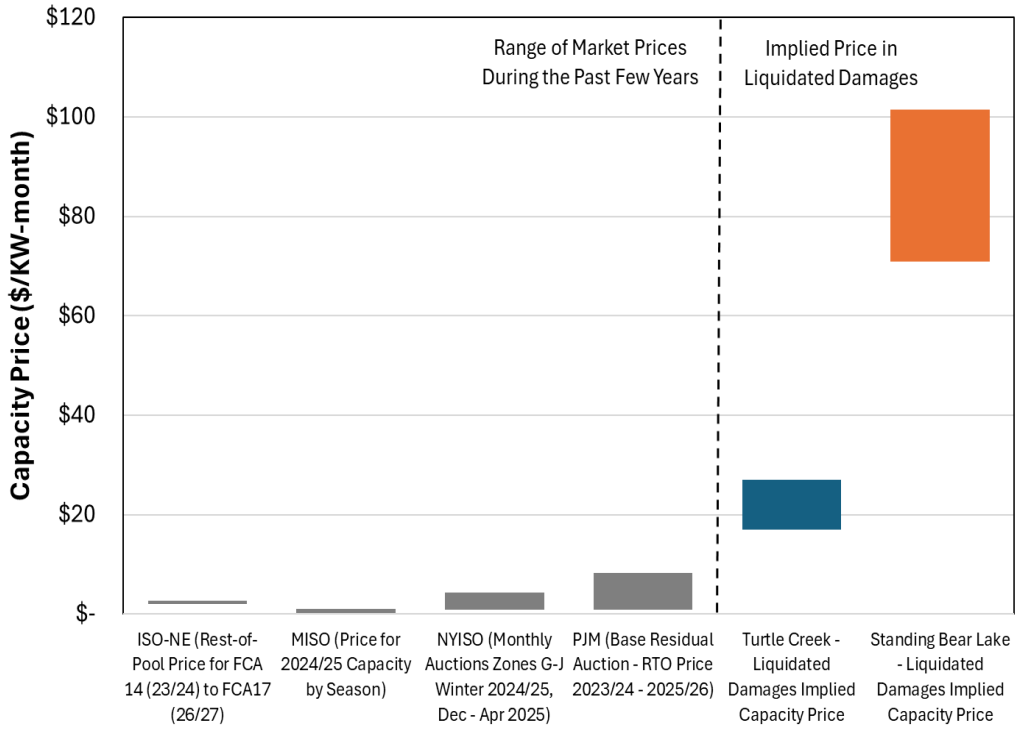
Figure 6: Implied Price for Energy in the Liquidated Damages Rate vs. SPP Prices



42. Similarly, the implied capacity price, assuming only value from capacity, is significantly higher than market indicators. Although SPP does not have a centralized capacity market with a transparent price for comparison, the capacity price in other markets is well below the implied price for capacity in the Liquidated Damages provision (**Figure 7**).[54]

[54] I understand from Counsel that OPPD has claimed to have entered into capacity contracts with third parties in anticipation of the delay. To the extent those bilateral contract details are provided, a more direct comparison could be made as to how the Liquidated Damages provisions compare to the costs estimated to be incurred by OPPD to replace the lost capacity of the Facilities. I understand, however, that OPPD has declined to provide information on transactions or prices paid to replace the power from the Facilities.

Figure 7: Implied Price for Capacity in the Liquidated Damages Rate vs. Other Markets[55]



43. These calculations of implied energy and capacity values are for illustrative purposes only. In fact, these units are expected to generate net revenues from three separate revenue streams: energy, capacity, and ancillary services. I calculate economic damages associated with each of these Electricity Products.

44. Based on my analyses of the Liquidated Damages provisions described in this section, I conclude the following:

1) **The Liquidated Damages provisions**, as constructed, do not reflect an estimate of economic harm. Amendment No. 1 increased the daily rate by $100,000 for the first month and thereafter for each of the Facilities. Amendment No. 2 increased the daily rate by another $100,000 to $200,000, depending on the Facility and whether it is applied to the first month or thereafter. There seems to be no underlying calculation to support these values, which also do not appear to be based on market conditions or economics.

2) **Amendment No. 2** significantly increased the daily delay charge for Liquidated Damages for delays extending from August to winter 2024/25, which is counter-

[55] Other markets that do have centralized procurement of capacity include New England ("ISO-NE"), New York ("NYISO"), and the Pennsylvania-Jersey-Maryland Interconnect ("PJM").

intuitive to the summer peaking nature of the SPP market, indicating a disconnect to OPPD's anticipated damages that is not reasonable.

3) **The implied energy and capacity prices** in the Liquidated Damages provisions are exorbitantly high compared to market prices for the same Electricity Products, indicating an unreasonable disconnect from the economic value of incurred due to the delay.

In other words, the Liquidated Damages daily charge, acceleration provisions after two months of delay, and implied values for energy and capacity indicate a complete disconnect from economic damages that OPPD could be expected to incur as a result of a delay in the Guaranteed Substantial Completion Date.

IV. Economic Damages

45. This section describes my calculation of estimated economic damages. The detailed calculations quantify the extreme disconnect between the Liquidated Damages provisions in Amendment No. 2 compared to the economic harm that OPPD may have incurred due to the delay in Substantial Completion. In my opinion, the disconnect is so large as to question whether Liquidated Damages in the Second Amended EPC contract was even intended to address economic harm in the first place.

46. I am informed by Counsel that, under Nebraska law, "the measure of damages for a breach of a contract claim is an amount that would place [the plaintiff] in as good a position as it would have enjoyed if the contract had been performed."[56]

47. The first question to ask is how OPPD was harmed. Presumably, in the absence of the Facilities, OPPD had to procure replacement power that otherwise would have been produced by the Facilities if the Guaranteed Substantial Completion Date had been achieved.[57] This is equivalent to calculating the replacement power costs to the operating costs that the Facilities would have incurred if the Guaranteed Substantial Completion Date

[56] *Infogroup, Inc. v. Database LLC*, 956 F.3d 1063, 1068 (8th Cir. 2020) (approving jury instruction so stating; citing *Bachman v. Easy Parking of America, Inc.*, 562 N.W.2d 369, 373 (Neb. 1997)).

[57] It is presumed that OPPD had to procure replacement power due to the delay in Substantial Completion. In fact, the Facilities were meant to replace existing units that OPPD intended to retire once the Facilities were operational. If the retirement of these units had been deferred due to the delay in Substantial Completion of the Facilities, economic damages would be lower than what I calculate – reflecting a combination of the costs of operating the old units and purchase replacement power to make up the difference. No additional capacity would need to be procured. The difference in ancillary services would be negligible. Therefore, my calculations of economic damages are a conservative measure of any potential harm that OPPD incurred due to the delay in Substantial Completion of the Facilities.

had been met. This approach can be positioned as an actual world versus a but-for world, a traditional methodology for calculating economic damages.[58]

- **Actual World:** Estimate of OPPD's actual purchase costs for Electricity Products; and
- **But-for World:** OPPD's estimated production costs to produce the Electricity Products had the Facilities been operational.

48. Under this methodology for calculating economic damages for breach of a contract claim, it is simple to assess economic damages as follows:

Economic Damages = Actual World less But-for World

= Higher Purchases Costs plus Lost Sales

= Higher Purchase Costs less Cost to Produce (Generate)

Specifically, economic damages effectively are the difference between the market price for the Electricity Products that the Facilities would have produced less the cost that would have been incurred if the Facilities had been operational (e.g., the cost of generation for energy).

49. Damages can be calculated as they actually occurred or as they were anticipated to occur:[59]

- **Ex-Post:** Calculating damages that actually did occur, using information known or knowable up to the issuance of the calculation, and updated at the time of judgment to reflect new information; or
- **Ex-Ante:** Calculating damages as of a historical point in time that reflects when the wrong-doing occurred.

[58] Among other references in Exhibit B, see for example:

Mark A. Allen, Robert E. Hall, and Vicotria A. Lazear, National Academies of Sciences, Engineering, and Medicine. 2011. Reference Manual on Scientific Evidence: Third Edition. Washington, DC: The National Academies Press. https://doi.org/10.17226/13163. "Reference Guide on Estimation of Economic Damages." National Academies of Sciences, Engineering, and Medicine. 2011. Reference Manual on Scientific Evidence: Third Edition. Washington, DC: The National Academies Press. https://doi.org/10.17226/13163.

[59] Among other references cited in Exhibit B, see for example:

Julie M. Carey, Christian Dippon, and Ralph Meghames, Global Arbitration Review, "Demystifying the damages assessment in international arbitration," June 21, 2024, https://globalarbitrationreview.com/guide/the-guide-damages-in-international-arbitration/6th-edition/article/demystifying-the-damages-assessment-in-international-arbitration

I have been asked by Counsel to calculate damages both ways, and to illustrate how a reasonable estimate of economic damages could have been performed as of the date Amendment No. 2 was signed (i.e., August 1, 2024).

50. The actual cost of OPPD's purchases of electricity to replace the Facilities is easily calculated from two simple inputs:

- **Quantity:** The amount of Electricity Products the Facilities would have produced; and
- **Price:** The market price for those Electricity Products.

51. The Quantity that the Facilities did not produce can be estimated using a simple spreadsheet model.

52. In calculating the actual cost of OPPD's purchases of replacement power, actual trade information from OPPD regarding its purchases and sales during the damages period could serve as the basis for damages. Such information would be particularly useful to the extent the incremental purchases or lost opportunities can be clearly delineated as being related to the failure to achieve Substantial Completion.

53. If OPPD entered into capacity contracts in anticipation of the delayed operations of the plants, the cost of such contracts could be considered in a damages calculation once they are provided. However, I have not yet been provided such information to incorporate into a calculation of economic damages that OPPD estimated to be incurred.[60] If such information becomes available, it can be incorporated into the damages calculation.

54. With respect to the market price, market information is readily available. In the absence of OPPD trade data, SPP prices can be used to estimate the value of the foregone Electricity Products. This information clearly would be in the possession of OPPD as an electric utility, generator, reliability planner, market participant in SPP, and LRE responsible for meeting its RAR. With that pricing data, combined with the estimated quantity that the Facilities would have produced, OPPD's actual cost to replace the Facilities due to the delay in Substantial Completion can be calculated using a simple spreadsheet model.

55. I therefore calculate damages as the difference between the market value of Electricity Products that the Facilities could have produced less the costs that OPPD would have incurred if the Facilities had been operational. This can be represented in an Actual/But-for World construct in one of two ways:

- **Lost Sales:**
  Actual World = Reduced or no sales due to delay
  But-for World = Net Revenues of sales that otherwise would have occurred

[60] I understand that Counsel has requested such data to be provided by OPPD on a voluntary basis.

- **Increased Purchase Costs:**
  Actual World = Purchases to cover lost services (e.g., replacement power costs)
  But-for World = Production costs that otherwise would have delivered the services

Although these can be mathematically equivalent, it is important to identify the construct that best reflects the cause of harm so that a make-whole calculation can be performed accurately.

56. Generally, the damages period reflects the period of time for which the Actual World diverges from the But-for World due to the wrong-doing for which defendant is liable. In this case, I do not tie the economic damages to any entities actions or liability. Instead, I calculate damages resulting from all delays, regardless of the cause or responsible party, to illustrate the difference between economic damages that may have been incurred by OPPD and Liquidated Damages. Once information is provided as to which entity caused which delays, liability for damages and an associated calculation can be performed.

57. Once the methodology is established, it is relatively simple to calculate damages using information that is readily available in the energy industry. Damages for a delay in Substantial Completion are readily ascertainable and capable of measurement. For example:

1) **Energy:** The harm is the inability of OPPD to generate and sell energy into the SPP market. Damages are the difference between Actual World of zero sales less the But-for World of net revenues associated with the market price for energy less the production costs for the energy that the Facilities would have produced.[61]

2) **Ancillary Services:** The harm is OPPD's inability to ancillary services into the SPP market. As with Energy, damages are the difference between the Actual World of zero sales less the But-for World of sales of ancillary services into the SPP market. [62]

3) **Capacity:** The harm is OPPD's higher purchase costs of capacity and/or reduced sales to third parties. Unlike energy and ancillary services, SPP does not operate a central market for capacity. Instead, entities such as OPPD who are responsible for ensuring sufficient capacity reserves are required to procure and build those reserves and report them to SPP through a submitted workbook to show sufficient capacity. I understand from Counsel that OPPD has claimed that it had to purchase capacity from third parties to meet its obligations. If so, damages are the difference between the Actual World of

[61] SPP settles generators separately from load. Therefore, the harm would be reduced sales of energy.

[62] SPP settles ancillary services providers separately from load. Therefore the harm would be reduced sales of ancillary services.

those purchases less the But-for World where no incremental capacity purchases were required because the Facilities met the Guaranteed Substantial Completion Date.[63]

58. These inputs to a calculation of economic damages are readily available or can be calculated from public data that SPP posts, as well as information reported to the U.S. Energy Information Administration. The amount that the Facilities would have produced can be estimated using a production cost model. I have performed these types of calculations multiple times in my career – usually in the context of estimating damages.

59. In addition, I expect that OPPD regularly reviews market price data to inform the trading activity in which it engages to procure the amounts of energy, ancillary services, and capacity to meet its load obligations. It is my opinion that the calculation I perform to assess the difference between market value and the value of the Facilities for purposes of economic damages is likely to be similar to the assessment that OPPD regularly performs as to whether to buy versus build new generation facilities.

60. If there are specific purchases and sales that OPPD entered into in anticipation of or because of the delayed Guaranteed Substantial Completion Date (i.e., to mitigate damages), I can incorporate those trades into the calculation once they become available. In the meantime, a calculation of economic damages using market prices provides a relevant indicator of how OPPD's actual damages compare to the Liquidated Damages calculation submitted by OPPD in its claim.

61. I summarize how economic damages can be calculated for each type of Electricity Product (i.e., energy, ancillary services, and capacity) below.

IV.A. Economic Damages from Delayed Energy Production

62. As already mentioned, OPPD expected the Facilities to be peaking units that would generate around 15 percent of the time. The energy that the Facilities produce is sold directly into the SPP spot market. OPPD purchases the energy that it requires to meet the needs of its customers directly from the SPP spot market. SPP settles for OPPD for generation and energy purchases.[64]

63. Economic damages are the net revenues that OPPD did not receive because the Facilities were not available to produce energy. The Actual World is zero sales for the delay period. The But-for World is the difference between the market price for energy and the costs that OPPD would have paid if the Facilities had been operational. To estimate economic

[63] To the extent SPP intended to retire older units once the Facilities achieved Substantial Completion, but delayed that retirement, damages could be mitigated. I do not consider this scenario in calculating damages even though it could would reduce them to the difference between the cost to produce at the old power plants versus the cost to produce at the Facilities.

[64] OPPD, Balancing supply and demand, June 11, 2024, https://oppdthewire.com/energy-marketers-balance-supply-and-demand/

damages associated with the lost energy generation due to the delay in Substantial Completion, key inputs to analysis include the following:

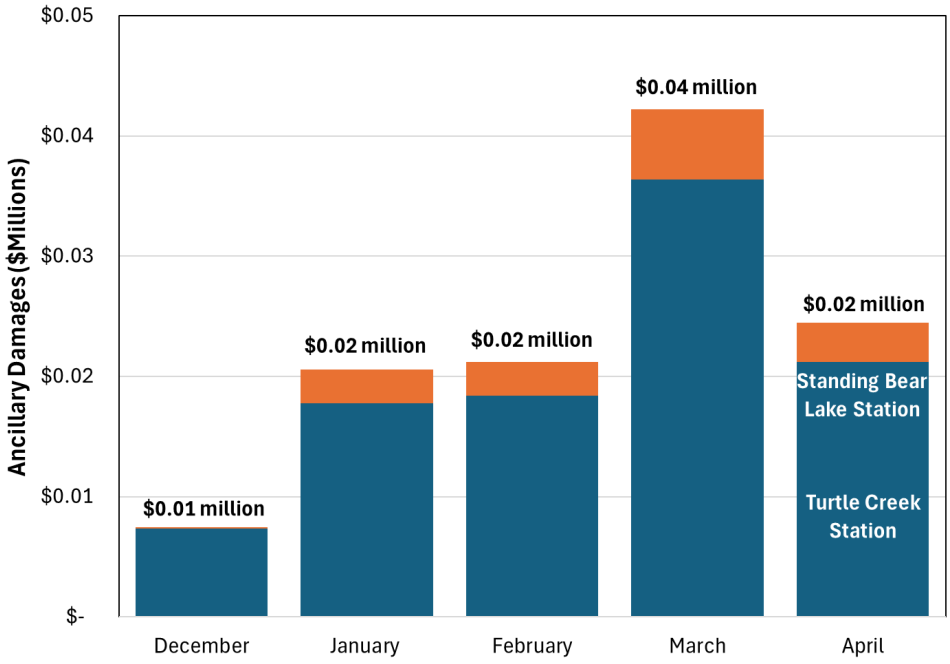
1) **Quantity:** The amount of energy that the Facilities would have generated based on SPP's economic dispatch of the Facilities (i.e., a comparison of production costs versus market prices);

2) **Price:** Market price for energy that the Facilities would have generated and that OPPD had to purchase because the Facilities did not; and

3) **Generation Costs:** Production costs associated with the generation of the quantity of energy that the Facilities would have produced.

64. A simple dispatch model combined with published data on SPP wholesale market prices for energy, natural gas prices and other variable costs of production, and an assumed conversion factor relating the amount of natural gas required to produce a megawatt-hour of energy can be used to estimate economic damages associated with any harm associated with delayed energy production from the Facilities (**Figure 8**).

Figure 8: Economic Damages from Delayed Energy Production



Gross Revenue	Cost of Production	Difference
$ 24,596,983	$ (17,019,898)	$ 7,577,085

IV.B. Economic Damages from Delayed Ancillary Services

65. The Facilities consist of fast-start and fast-ramp generation technologies that could provide a number of ancillary services to the SPP market.[65] Damages are equal to the lost net revenues from sales of ancillary services during the delay period. Actual World = No ancillary service from the Facilities; But-for World = Net revenues that the Facilities would have generated from supplying ancillary services

66. As a general rule, ancillary services are not a significant source of revenues for most generators. In SPP, the amount of ramp and spinning reserves is approximately equivalent to the capacity of the Facilities, on average. Yet, there is potentially 23,000 MW of simple cycle combustion turbines out of nearly 100,000 MW of total capacity that the Facilities would be competing against.

67. Although the Facilities may provide regulation services in the future as more renewable resources come online, they are not expected to have earned significant revenue from provision of such services this past winter and spring if they had been Substantially Complete.

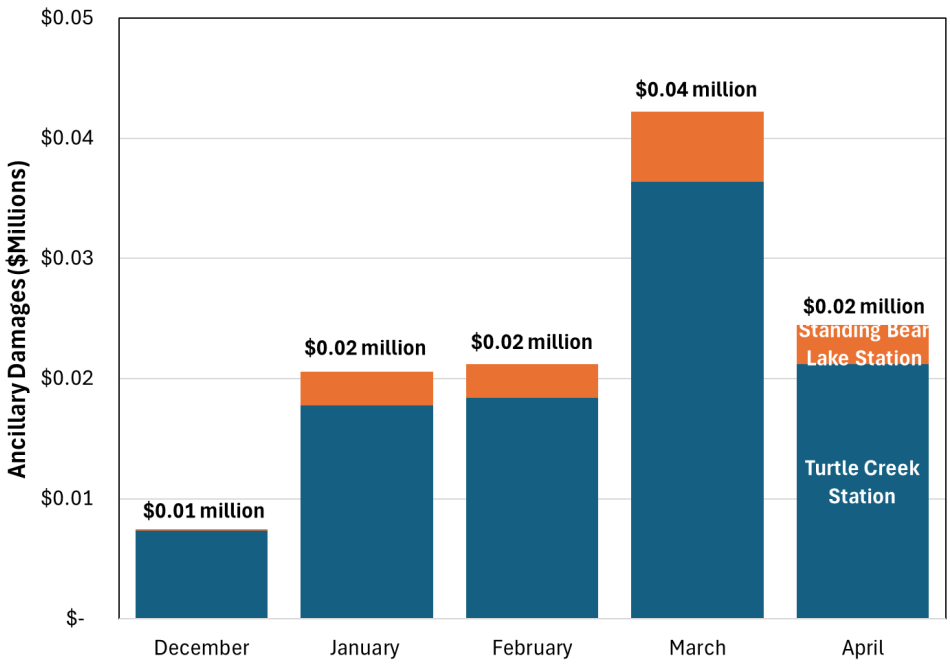
68. Ideally, I would be able to review the projections that OPPD performed to understand the anticipated net revenues for ancillary services that the Facilities were expected to generate. In the absence of that data, or the SPP settlements data for OPPD that would indicate how much its generation plants earn in from ancillary services, Instead, I apply hourly clearing prices for SPP Regulation-Down and Spinning Reserves to the capacity of the Facilities depending on whether they were dispatched (so could provide Regulation-Down) or not operating (and therefore could provide Spinning Reserves).[66] That said, as OPPD and SPP information becomes available, I reserve the right to modify this estimate.

69. As OPPD would not have sold a significant amount of Ancillary Services, harm associated with the delayed ability to generate Ancillary Services at the Facilities would be relatively small (**Figure 9**).

[65] WÄRTSILÄ, WÄRTSILÄ 50DF, https://www.wartsila.com/docs/default-source/energy-docs/technology-products/product-leaflets/wartsila-50df.pdf?sfvrsn=e9eda345_20; SIEMENS energy, SGT6-5000F gas turbine, https://www.siemens-energy.com/us/en/home/products-services/product/sgt6-5000f.html#accordion-f77d3baa53-item-90e17cc04b

[66] Given that the dispatch model assumes that the Facilities are either operating at full capacity or not at all, we do not incorporate potential ramping services. Again, given the competition, potential revenues from such services are likely to be negligible.

Figure 9: Economic Damages from Delayed Ancillary Services



IV.C. Economic Damages from Delayed Capacity

70. Under the SPP Market Rules and Open Access Transmission Tariff, all reserve planners (such as OPPD) are required to have a sufficient amount of resources to meet its peak load requirements plus a reserve above and beyond the peak.

71. Unlike other markets, SPP does not operate a centralized market for capacity. However, market participants who are short can purchase capacity from third parties and those who are long can sell capacity through bilateral arrangements. Such transactions would be available in OPPD's workbook submitted to SPP to confirm that it had sufficient capacity resources.[67]

72. In the absence of access to OPPD's tradebook, capacity value can be estimated using SPP estimates of its reserves and a nearby market price for capacity.

73. SPP has excess reserves for winter 2024/25.[68] Therefore, I would expect the price for capacity to be less than the Net Cost of New Entry ("Net CONE"). Multiple ISOs project the Net CONE (i.e., CONE less net revenues from energy and ancillary services) as part of

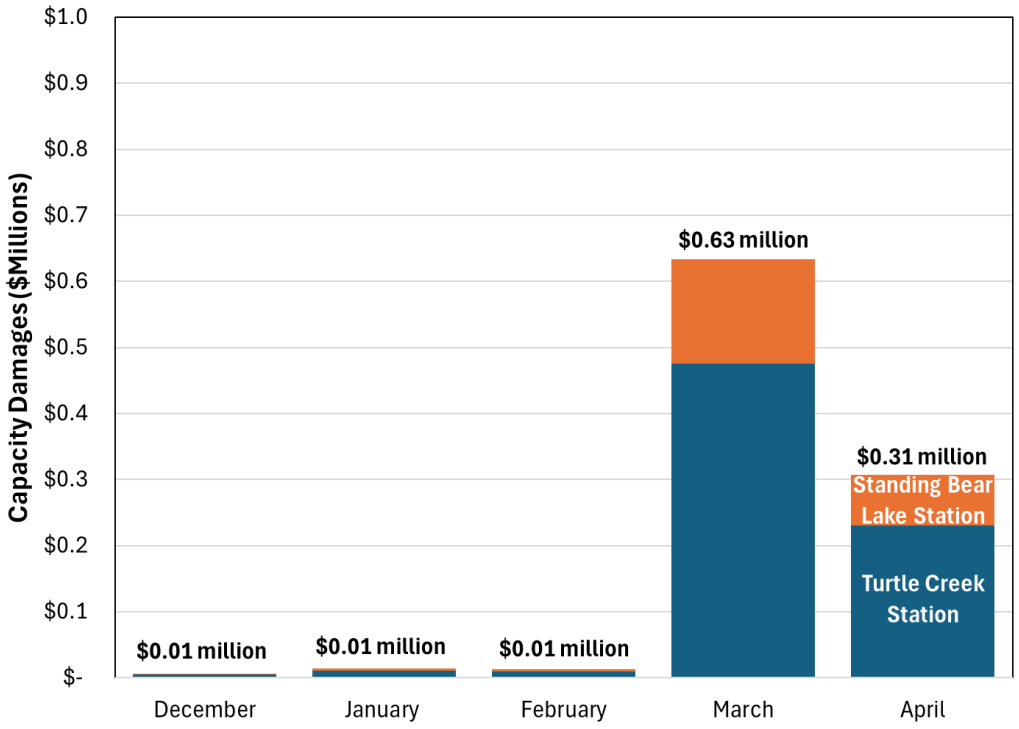
[67] SPP, OATT, Attachment AA Resource Adequacy, Section 13 and Section 14, https://spp.org/documents/58597/attachment%20aa%20tariff.pdf

[68] NERC, "2024-2025 Winter Reliability Assessment," November 2024, p, 18, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_WRA_2024.pdf

their capacity market parameters. SPP also projects CONE as part of its penalties for deficiencies in reserves.[69].

74. The price for capacity in the neighboring market operated by MISO provides proxy prices for what OPPD may have had to procure to cover the delayed capacity from the Facilities. Multiplying the Capacity Prices for Iowa, which is contiguous to Nebraska and interconnected to the OPPD system, estimates damages associated with capacity that OPPD may have had to procure as a result of the delay in the Substantial Completion of the Facilities. Under this approach, damages caused by the delay in capacity is estimated to be less than $1 million (**Figure 10**).

Figure 10: Economic Damages from Delayed Capacity



75. Unlike with energy, there is no production cost for capacity. I am informed that OPPD already has paid against the milestones in the Second Amended EPC Contract. Therefore, the costs to produce are fixed in both the Actual and But-for Worlds and cancel out.

[69] SPP OATT § 13.0.

IV.D. Conclusions on Economic Damages

76. The calculation of economic damages is not complex and can be calculated using a standard spreadsheet software such as Excel.

77. **Figure 11** summarizes the economic damages estimated to be incurred by OPPD due to the delayed Guaranteed Substantial Completion Date for the period December 17, 2024 through April 15, 2025.

Figure 11: Estimated Economic Damages (December 17, 2024 through April 15, 2025)[70]

Damages Category	Standing Bear Lake	Turtle Creek	Total
Energy	$1,955,162	$5,621,923	$7,577,085
Ancillary Services	$ 14,781	$ 101,150	$ 115,931
Capacity	$ 242,040	$ 730,845	$ 972,885
TOTAL	**$2,211,983**	**$6,453,918**	**$8,665,901**

This is the equivalent to OPPD having to purchase $25.7 million dollars in energy, capacity and ancillary services, and incurring the production costs of $17.0 million.

Damages = Higher Purchase Costs less Cost to Produce (Generate)

= $25.7 million - $17.0 million

= $8.7 million

78. The reasonableness of these values can be confirmed by comparison to the MISO calculation of the Cost of New Entry ("CONE") less projected net revenues for energy and ancillary services (i.e., the Net CONE). for purpose of setting parameters in its centralized capacity market. MISO projects the CONE in the MISO North/Central region which is interconnected to SPP near OPPD to be $121,220/MW-year for 2025/26 and the Net-CONE to be $73,636 / MW-year.[71] The difference represents expected net revenues from energy and ancillary services. Multiplying times the 600 MW the Facilities represent totals annual revenues for these two Electricity Products equal to $28.6 million for the year (or $9.5 million for four months).[72] This pro-rata value, which does not account for seasonality

[70] The Guaranteed Substantial Completion Date for Turtle Creek Station is December 16, 2024 and for Standing Bear Lake Station, December 30, 2024. Damages begin the following day.

[71] MISO, Resource Adequacy Subcommittee (RASC), "MISO Cost of New Entry (CONE) and Net CONE Calculation for Planning Year 2025/26," September 23, 2024, p. 18, https://cdn.misoenergy.org/20240923%20RASC%20Item%2003%20CONE%20and%20Net%20CONE%20Update649247.pdf

[72] This pro-rata share assumes that net revenues are distributed equally across the months. In fact, the Facilities would

and therefore would overstate winter damages, is extremely close to the sum of damages for energy and ancillary services of $7.7 million that I estimate. Perhaps more importantly, the MISO calculation of Net CONE for 2025/26 confirms:

- **Damages calculations are straightforward:** Calculating damages incurred by OPPD due to delay of Substantial Completion is not complex.

- **Electricity industry entities frequently perform forward-looking estimates:** MISO performs such projections, along with other ISOs, investors, and market participants.

- **The annual value of projected net revenues from energy and ancillary services for a new combustion turbine such as Turtle Creek is significantly below the Liquidated Damages provisions.** MISO assumes that an advanced combustion turbine is the next new entrant. MISO calculates the all-in total cost of such a new entrant through the CONE, and the required capacity costs once net revenues from energy and ancillary services are considered through the Net CONE. SPP and MISO currently have excess capacity, so the value of such capacity during the delay is well below the estimated cost required to support a new entrant. The difference between CONE and Net CONE (representing the value of energy and ancillary services in the MISO market) is well below Liquidated Damages, and the low capacity value indicated by MISO's centralized capacity auctions do not make up the difference.

- **The reasonableness of my economic damages calculations are confirmed.** The MISO's CONE and Net CONE values confirm that my calculations of economic damages for energy and ancillary services are an accurate representation of the relative magnitude of actual and projected damages compared to the Liquidated Damages value.

79. SPP also calculates CONE as part of its methodology for assessing penalties on market participants for failure to maintain sufficient RAR.[73] In SPP's Open Access Transmission Tariff ("OATT") Section 13.0, SPP states, "The Cost of New Entry ("CONE") value shall be 85.61 $/kw-yr." Multiplying this value by 600 MW (i.e., 600,000 kW) results in a total value of $51.4 million.[74] In other words, Liquidated Damages exceed the CONE of a new entrant of the same size as the Facilities. Once again, the Liquidated Damages values are unreasonable and completely disconnected from the economics of new power plants.

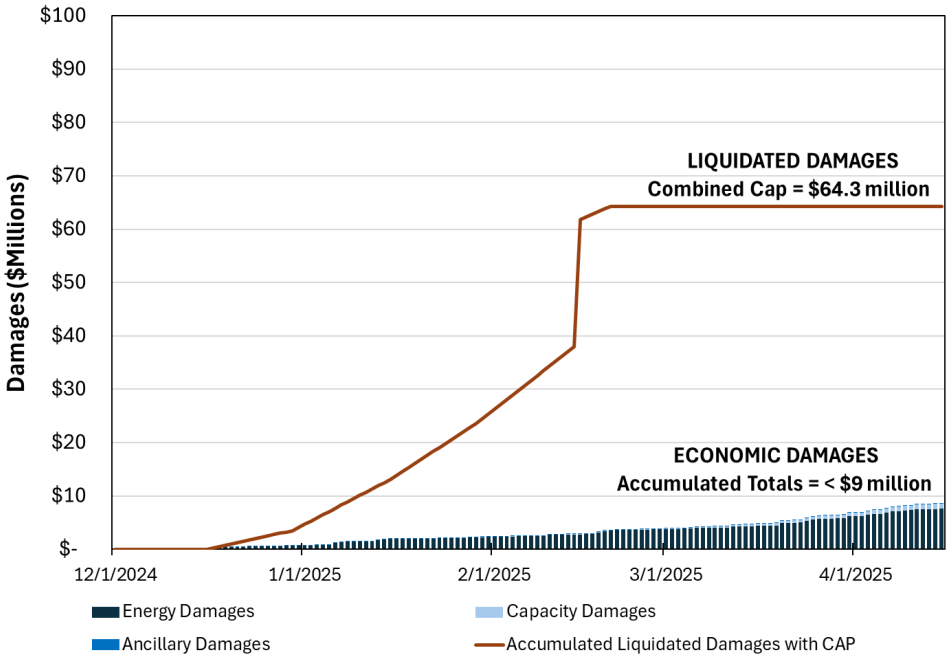
be expected to produce more in the summer months, explaining why the economic damages calculation would be less than the pro-rata share.

[73] SPP Open Access Transmission Tariff, Section 13.0 and 14.2, https://sppviewer.etariff.biz/tariff

[74] Calculation: 600,000 kW x $85.61 / kW-year = $51,366,000.

80. Plotting the underlying detail to the total ex-post economic damages calculation to cumulative Liquidated Damages illustrates the magnitude of the disconnect between the two (**Figure 12**).

Figure 12: Cumulative Economic Damages versus Liquidated Damages



81. The approach I describe above is used by the industry to determine damages for project delays, cancellations, and failure to deliver guaranteed quantities. The attached Exhibits provide additional detail as follows:

- **Methodology:** Exhibit D provides a more detailed description of the methodology used to estimate damages.

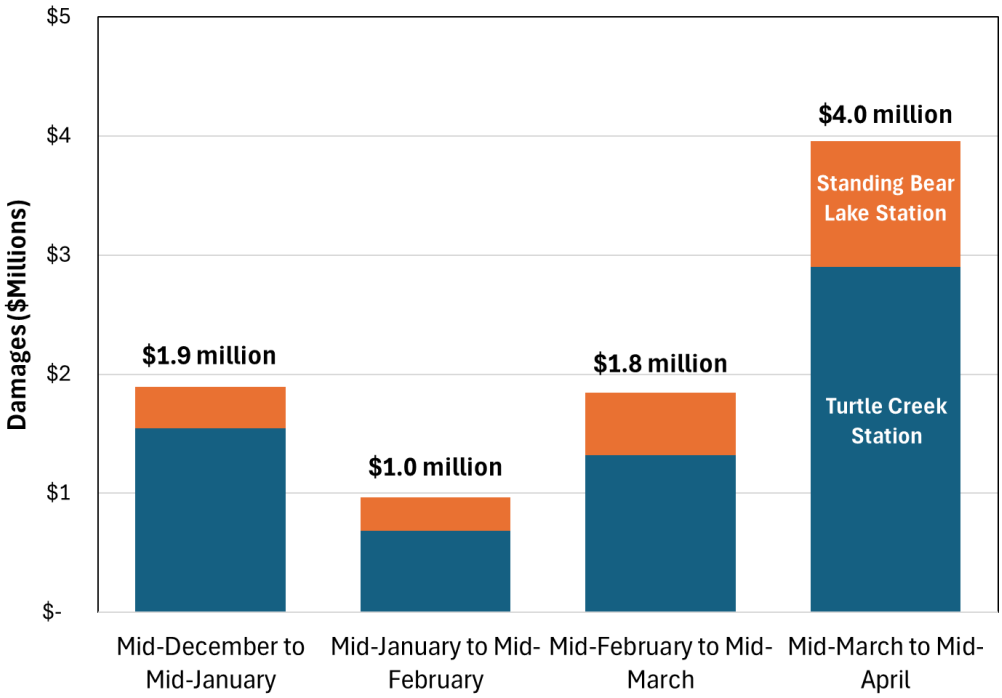
- **Assumptions:** Exhibit E provides a more detailed description of the data sources and inputs used in the calculation of economic damages.

82. I understand that the Guaranteed Substantial Completion Date is imminent. I calculate the economic damages starting the day after the Guaranteed Substantial Completion Date in the Second Amended EPC Contract using historical data. If needed for an economic damages calculation, this can be extended to a future date to include the entirety of a damages period. In the meantime, this value through mid-April serves to illustrate the extreme discrepancy between Liquidated Damages versus the economic damages that OPPD incurred.

83. Economic damages estimated to have been incurred by OPPD for the period through April 15, 2025 are around $8.7 million. This value is well below the Liquidated Damages Provisions.

84. The distribution of economic damages over time illustrates the summer peaking nature of the Facilities. Except during a winter storm or extreme weather event, the Facilities are not expected to operate much during the winter and spring seasons. Economic damages are higher this past spring due to an extreme weather event[75] (**Figure 13**).

Figure 13: Estimated Economic Damages by Month



85. In conclusion, the amount specified for liquidated damages in Amendment No. 2 is vastly greater than OPPD's economic damages incurred during the period from December 17, 2024 through April 15, 2025. For this period, Liquidated Damages are over 7 times greater than the economic damages that OPPD is estimated to have incurred. The Liquidated

[75] According to the National Weather Service, "A strong, early spring low pressure system tracked from the central Plains through the Upper Midwest Wednesday, March 19th bringing blizzard conditions across Nebraska and Iowa, blowing dust and wildfires across the southern Plains, and severe thunderstorms and tornadoes across Illinois and Indiana." National Weather Service, "March 19, 2025: Line of Storms Produces Damaging Winds, Hail, and Multiple Tornadoes," March 19. 2025, https://www.weather.gov/lot/2025_03_19_SevereWeather#:~:text=A%20strong%2C%20early%20spring%20low%20pressure%20system%20tracked,severe%20thunderstorms%20and%20tornadoes%20across%20Illinois%20and%20Indiana.

Damages Provisions in Amendment No. 2 do not provide a reasonable estimate of harm incurred by delay in Substantial Completion of the facilities.

86. I also conclude that actual historical data is readily available to perform a calculation of economic damages that had been incurred by OPPD due to a delayed Guaranteed Substantial Completion Date. Furthermore, OPPD would have had more detailed information regarding the trades and contracts, if any, that had been entered into to mitigate damages. Such trades can be incorporated into the estimated damages calculation when made available.

V. Anticipated Damages as of August 1, 2024

87. This section addresses whether OPPD would have been able to anticipate the economic damages that would have been incurred due to a delay in the Guaranteed Substantial Completion Date. In my experience, these types of "ex-ante" calculations are performed all the time by industry investors and market participants.

88. In my opinion, OPPD would be able to estimate potential economic damages using market information available on a day-to-day basis. Specifically, market participants would have access to:

1) **Price:** Recent settlements and futures prices for Electricity Products that the Facility were expected to produce, include the following:

    a. **SPP Futures Prices for Energy Shaped by Historical Conditions:** Market-based forward trades and futures prices for natural gas at a nearby hub and energy in SPP North, the zone in which the Facilities would be operating and into which OPPD would deliver its energy from the Facilities, plus a five-year history of hourly pricing for five different price shape scenarios;

    b. **SPP Market Prices for Ancillary Services:** Recent and anticipated prices (based on futures energy prices) for Ancillary Services that the Facilities would have produced or that OPPD may have purchased in the absence of the Facilities, and an interim estimate of damages associated with the delayed sales of ancillary services; and

    c. **Bilateral Market Prices for Capacity:** Prices for capacity established in the MISO market for Iowa that OPPD procured or would have been able to sell if the Facilities had been operational.

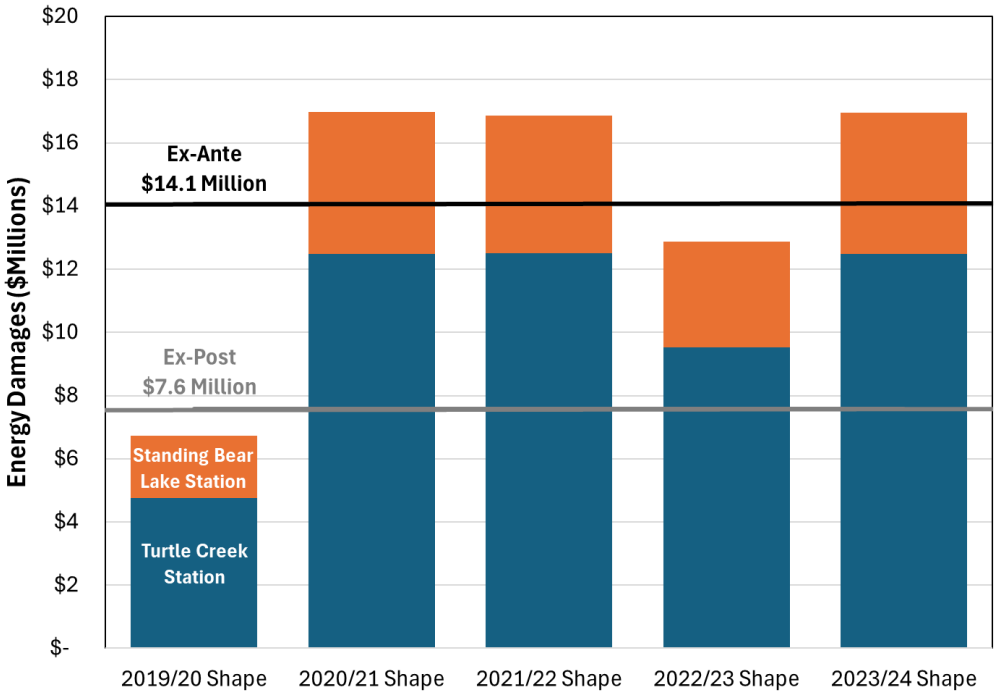
2) **Quantity:** The quantity that each Facility would have produced can be estimated using the same approach described for historical data, but applied to the new price projections.

In other words, the data and methodology exist to project expected damages the event of a delayed start date.

89. I use this approach to estimate what OPPD could have projected damages to be as of August 1, 2024, the date when Amendment No. 2 was signed.

90. Using information known or knowable as of August 1, 2024, and the methodology described above, I estimate that projected economic damages for energy during the period from December 17 through April 15, 2025 would have been $6.7 million to $17.0 million, depending on the assumed price shapes, with an average of the past five years totaling $14.1 million (**Figure 14**). This range is consistent with the economic damages I calculated using historical data.[76]

Figure 14: Ex-Ante Energy Damages due to Delayed Energy as of August 1, 2024



91. Prices for capacity and ancillary services are less volatile than energy prices, and therefore less complicated to estimate. MISO capacity markets had established the forward-looking

[76] For context, recall that the past four years have experienced extremely disruptive events which would be expected to result in higher damages value, including: 1) A world-wide pandemic starting in 2020; 2) Winter Storm Uri in 2021; 3) extremely high global natural gas prices due to the Russian invasion of the Ukraine in 2022; and 4) supply chain issues and inflation in 2023, that carried forward into 2024.

price during its auctions held on March 26, 2024. I therefore use the same prices for capacity in the ex-ante analysis as for the ex-post analysis.

92. SPP ancillary services auctions are held on a day-ahead and real-time basis. SPP has established a methodology for estimating future ancillary services that a new entrant would receive. As part of the Net CONE calculation used to apply penalties to market participants that fail to meet their RAR, SPP calculates a standard deficiency payment based on a calculated "Sufficiency Valuation Curve."[77] The Sufficiency Valuation Curve is based on the cost of new entry ("CONE"). I apply the pricing from the prior year's auctions to estimate economic damages on an ex-ante basis as of August 1, 2024, and actual ancillary services prices for the ex-post damages assessment.

93. The projected range for economic damages using an ex-ante approach is significantly below the value generated by the Liquidated Damages provisions for that same period (**Figure 15**).

Figure 15: Ex-ante Damages by Electricity Product (December 17, 2024 – April 15, 2025[78]

Damages Category	Standing Bear Lake	Turtle Creek	Total
Energy	$3,728,946	$10,350,734	$14,079,680
Ancillary Services	$ 15,871	$ 108,361	$ 124,232
Capacity	$ 242,040	$ 730,845	$ 972,885
TOTAL	**$3,986,857**	**$11,189,940**	**$15,176,797**

94. In my opinion, I conclude that OPPD could have projected anticipated economic damages as of August 1, 2024 or could have included language describing how to calculate such economic damages in a Liquidated Damages provision either on an ex-post or ex-ante basis.

VI. Conclusions

[77] In 2023, SPP filed to request approval to assess penalties against market participants that did not have sufficient capacity to meet their RAR during the winter months of December 1 to March 1. Although this was rejected by FERC, the FERC Order provides an overview of SPP's use of CONE and Net CONE in the context of capacity and how market participants such as OPPD may procure such capacity. 185 FERC ¶ 61,159 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION Before Commissioners: Willie L. Phillips, Acting Chairman; Allison Clements, and Mark C. Christie. Southwest Power Pool, Inc. Docket No. ER23-2781-000 ORDER REJECTING TARIFF REVISIONS (Issued November 30, 2023), https://www.spp.org/documents/70636/20231130_order%20rejecting%20tariff%20revisions%20-%20revisions%20to%20add%20winter%20season%20resource%20adequacy%20requirement_er23-2781-000.pdf

[78] Other markets that do have centralized procurement of capacity include New England ("ISO-NE"), New York ("NYISO"), and the Pennsylvania-Jersey-Maryland Interconnect ("PJM").

95. Economic damage estimates actually incurred by OPPD can be readily calculated using publicly-available information.

96. Based on my calculations, OPPD incurred economic damages at levels significantly lower than what the Liquidated Damages provisions are for the delay in Substantial Completion through April 15, 2025.

97. The same methodology could be applied looking forward at an historical date to project expected economic damages.

98. Per the request of counsel, I project what such an estimate of future economic damages would be as of August 1, 2024, when Amendment No. 2 was signed, and conclude that (i) OPPD could have performed such a calculation with information known or knowable on a forward-looking basis; and (ii) the values would have been significantly lower than the daily delay charge in the renegotiated Liquidated Damages provisions in Amendment No. 2.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts and data stated herein are true and correct. Executed on April 28, 2025.



Tanya Bodell

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
Chapter 11, Case No. 24-90377 (MI), Adversary No. 25-03025 (MI)
Declaration of Tanya Bodell

EXHIBIT A: Curricula Vitae

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
Chapter 11, Case No. 24-90377 (MI), Adversary No. 25-03025 (MI)
Declaration of Tanya Bodell



Tanya Bodell

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Tanya Bodell, Partner, leads StoneTurn's energy and sustainability offerings in business advisory services, regulatory support, and expert testimony in large-stakes litigation, levering more than 25 years of experience in energy industry matters and associated environmental impacts.

Tanya provides business advisory and expert support to clients, advising on business strategy, asset valuations, mergers/acquisitions, market rules, regulatory outreach, and energy transition. She also provides expert testimony in solvency, regulatory and litigation cases pertaining to the energy industry, including damages claimed for breach of contract, fraudulent misrepresentation, market manipulation and other liability.

SELECT PROFESSIONAL EXPERIENCE

LITIGATION/REGULATION

Tanya has significant experience in high-stakes litigation in which hundreds of millions of dollars are at risk. She has played a key role in cases arbitrated, mediated, litigated, and heard before regulatory agencies, providing litigation support including assessment of business damages and lost profits, market context, expert testimony, economic arguments in legal filings, and settlements. From 2008 to 2011, she served a three-year term as Vice Chair of Standing Committee for the International Centre for Expertise at the International Chamber of Commerce. Below are selected examples of cases in which she has provided expert support and testimony.

Education

MBA, Sloan Fellow, Massachusetts Institute of Technology

MPP, Harris School of Public Policy, University of Chicago

B.A., Mathematical Economics, Pomona College

Practice Areas

Energy

Valuation

Litigation

Regulatory

Languages

English

Spanish

StoneTurn

Contract Dispute

- Provided industry context for contract interpretation regarding what would be considered comparable electricity products.
- In a dispute between two large hydroelectric power producers, served as the testifying expert on industry context pertaining to firm and non-firm electricity products.
- Served as the expert witness on industry context in a contract interpretation case between an electric cooperative and municipal electric company who jointly held rights to the output of a large coal generation plant.
- For various industry clients, reviewed multiple power purchase agreements to advise on contract renegotiations, merchant plant investment opportunities and valuation of non-utility generation acquisitions.
- For a waste coal facility in Pennsylvania, served as the independent appraiser of the facility to assess the fair market sales value under the remainder of the power purchase agreement and as a merchant plant.
- For a coal plant in Connecticut undergoing contractual restructuring, assessed the value of the facility under the existing power purchase agreement, a proposed tolling agreement, and as a merchant facility.
- For the counterparty to a long-term power purchase agreement with the California Department of Water and Power, reviewed publicly-available contracts and settlements to advise on potential contract restructuring positions.
- For a potential purchaser of a cogeneration project in Oklahoma, performed a market study to assess the regulatory regime and other aspects of the market that could affect the value of the investment, including future gas and electricity price projections.
- For an owner of a cogeneration project in Michigan, analyzed a proposed back-to-back transaction involving the power purchaser and a third party to determine whether the proposed agreement posed additional risks for the project. The analysis included review of the purchaser's stranded cost calculations and regulatory filings, as well as a detailed assessment of the two contracts and associated project documents.
- For a Maryland utility, calculated stranded costs associated with its power purchase agreement and determined potential settlement negotiation positions and strategies that the utility could take with respect to buying down the contract.
- For a Texas cooperative in a power purchase agreement with a cogeneration project, analyzed potential renegotiation positions, including the potential for a buy-out and buy-down of power prices.
- In a dispute over interpretation of the terms of a cogeneration contract in Florida, supported expert testimony on the application of the Public Utility Regulatory Policy Act (PURPA) to the contract. The analysis included a survey of all publicly available non-utility generation project contracts.

Damages

- Calculated damages related to cancellation of a solar energy project power purchase agreement in ERCOT.
- For a trading company, calculated damages associated with lost opportunity and out-of-pocket costs related to trading activities in exceedance of company credit limits and practices in MISO and ERCOT,

- For a California renewable power generator, calculated damages associated with the California fires and failure to be able to deliver electricity products to market and under contract.
- For a transmission owner being sued for failure to operate in accordance with standard utility practice, critiqued the plaintiff's expert analysis and performed a damages calculation of the opportunity cost of lost sales associated with the transmission line outage under prices that would have occurred if the plant had been operating.
- In a lawsuit between an electric utility and a cooperative that served multiple load serving entities, assessed the value of the excess energy the utility supplied to the load serving entities due to their breach of the supply contract.
- In a dispute between a large hydroelectric power producer and natural gas independent power producer in the Pacific Northwest over damages exceeding $1 billion, reproduced the independent power project's pro-forma and calculated lost profits to the project under various scenarios including alternative electricity and gas prices and water conditions. Developed the analysis of the required return on equity for highly leveraged non-utility generation projects, including the equity, debt, and financial Betas.
- In a dispute over interpretation of the terms of a power purchase agreement in New Jersey, calculated lost profits under alternative interpretations.
- In a contractual dispute between a U.S. electric utility and qualifying facility in Pennsylvania, analyzed the financial viability of the cogeneration project for a temporary restraining order proceeding, supported the expert testimony of the damages expert and assisted counsel for deposition and cross-examination questions.
- For an electric utility suing contractor for over $55 million over failure to install a fire protection, calculated impact on business due to replacement power costs incurred while the coal plant was down, a key aspect of the damages claim. Coordinated with other experts on related matters including project schedule and appraisal.
- For multiple litigations concerning Westinghouse nuclear steam generator product liability cases in which damages claims exceeded $500 million per case, developed damages approach and calculated alternative damages tied to liability case. Repeated and adjusted analytical approach for four of the ten lawsuits brought against Westinghouse by electric utilities, drafted expert reports, provided document review and deposition questions to counsel, and advised on strengths and weaknesses of case using ex-ante and ex-post approaches.

Tax Litigation

- In a claim concerning proper tax treatment of a contingent debt instrument, defended client against IRS investigation. Analyzed contingent debt instruments in the context of a 20-year, multi-billion dollar coal purchase agreement, drafted expert reports, and advised counsel on depositions.
- In an IRS claim concerning excessive retention of earnings by a privately-held marine transportation business, analyzed working capital and investment cash needs to show that the retained earnings were required to meet legitimate business purposes.

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EXPERT TESTIMONY

Tanya has testified on a number of matters in the energy industry, focusing on economic analyses, cost-benefit analyses, estimations of damages, and regulatory proceedings.

Litigation

- In the matter of the Brigham and Women's Hospital, Inc., Plaintiff, v. MATEP LLC, MATEP LP, and Longwood Energy Partners LLC, Defendants, before the Superior Court of the Commonwealth of Massachusetts, Suffolk, Civil Action No. 2384-CV-01373BLS2.
  - "Expert Report of Tanya L. Bodell on behalf of Defendants," November 7, 2024.
  - "Rebuttal Report of Tanya L. Bodell on behalf of Defendants," December 13, 2024.
- In the matter of City of Denton, Texas, acting by and through its Electric Utility Department Denton Municipal Electric v. Delilah Solar Energy LLC, Samson Solar Energy LLC, and Invenergy LLC, before the District Court, 192nd Judicial District, Dallas County, Texas, Case No. DC-22-17013:
  - "Expert Report of Tanya Bodell," August 26, 2024.
  - "Rebuttal Report of Tanya Bodell," October 25, 2024.
- In the matter of J. Christian Allen, an Individual, v. Concord Energy Holdings, LLC and Concord Energy, LLC, before the District Court in Denver County, Colorado, Case No. 2021CV32298, "Expert Report of Tanya L. Bodell," on market conditions and damages, October 23, 2023.
- American Arbitration Association, Dominion Nuclear Connecticut, Inc. vs. The Connecticut Light and Power Company, Case No. 01-16-0000-6412, "Prepared Direct Testimony of Tanya Bodell on Behalf of the Connecticut Light and Power Company," on damages, August 17, 2017.
- In the Matter of Hydro-Québec v. Churchill Falls (Labrador) Corporation Limited, Province of Québec, District of Montréal, Superior Court, N: 500-17-078217-133.
  - "Continuous Energy: An Overview of Contemporaneous Industry Context," July 10, 2015.
  - "Interruptible Power: An Overview of Industry Context and CF(L)Co's Ability to Sell," July 3, 2015.
- "Expert Report of Tanya L. Bodell," In the Matter of Arbitration Between Big Rivers Electric and City of Henderson Utility Commission d/b/a Henderson Municipal Power and Light, Defendants, American Arbitration Association Re: 52-198-00173-10, August 24, 2011.

Regulatory

- On behalf of the PJM Power Providers Group, Before the Federal Regulatory Committee, PJM Quadrennial Review, regarding proposed changes to the market rules for the Reliability Pricing Model market design:
  - "Affidavit of Tanya L. Bodell," Docket No. ER22-2984-000, October 21, 2022.
  - "Reply Affidavit of Tanya L. Bodell," Docket No. ER22-2984-000, November 14, 2022.

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- On behalf of Kern Oil, prepared an economic report to evaluate claims made by Environmental Protection Agency in its December 7, 2021 Proposed Denial of Petitions for Small Refinery Exemptions related to the implications of Renewable Fuel Standard ("RFS") compliance requirements on a small refinery operating in central California titled, "Financial and Market Assessment of Renewable Fuel Standard Requirements on Kern Oil & Refining Company (EPA ID #5038)," 7 February 2022.
- On behalf of Morongo Transmission LLC, submitted expert testimony to FERC regarding the differential risks of their share of a transmission project over existing rights of way in Southern California compared to the risk of the partnering utility in support of transmission return on equity adders, Federal Energy Regulatory Commission, Docket No. ER21-669-000, "Prepared Direct Testimony of Tanya L. Bodell," December 15, 2020.
- On behalf of NRG Power Marketing, LLC, submitted expert testimony to FERC regarding the ISO-NE proposal to provide interim compensation for generation resources with inventoried fuel, Federal Energy Regulatory Commission, Docket No. ER19-1428-000, "Prepared Direct Testimony of Tanya L. Bodell," April 15, 2019.
- Prepared in Support of Comments filed on the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, 83 Fed. Reg. 67337 (Dec. 28, 2018) by the Attorneys General of States of Washington, Delaware, Oregon, Maine, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Rhode Island, Vermont, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, and the District of Columbia, "Economic Assessment of Proposed Oil and Gas Lease Sales In the Arctic National Wildlife Refuge Coastal Plain," March 2019.
- On behalf of Calpine Corporation Vista Energy Corporation and Bucksport Generation, LLC (the Generator Intervenors) before the Maine Public Utility Commission, Docket No. 2017-00232.
    - "Prepared Direct Testimony of Tanya L. Bodell," submitted April 3, 2018.
    - "Prepared Surrebuttal Testimony of Tanya L. Bodell," submitted August 17, 2018.
    - "Prepared Corrected Supplemental Testimony of William S. Fowler and Tanya L. Bodell," Submitted December 24, 2018.
- Prepared Remarks of Tanya L. Bodell regarding Proposed Support for New Jersey Nuclear Plants before the New Jersey Senate Environment and Energy and the Assembly Telecommunications and Utilities Committee, State House Annex, December 20, 2017.
- On behalf of the PJM Power Providers Group, Before the Federal Regulatory Committee, PJM Quadrennial Review, "Affidavit of Tanya L. Bodell," Docket No. ER19-105-000.
- On behalf of the New England Power Generators Association, Exhibit NPG-4, Before the Federal Energy Regulatory Committee, Docket No. ER17-795-000.
    - "Prepared Direct Testimony of Tanya L. Bodell," submitted February 3, 2017.
    - "Prepared Surrebuttal Testimony of Tanya L. Bodell," submitted March 6, 2017.
- Massachusetts Electric Company and Nantucket Electric Company each D/B/A National Grid, before the Massachusetts Department of Public Utilities, Docket No. 1605.
    - "Testimony of Tanya Bodell on Behalf of the Massachusetts Attorney General," June 20, 2016.
    - "Surrebuttal Testimony of Tanya Bodell on Behalf of the Massachusetts Attorney General," July 18, 2016.

- NSTAR Electric Company and Western Massachusetts Electric Company D/B/A Eversource Energy, before the Massachusetts Department of Public Utilities, Docket No. 15-181.
  - "Testimony of Tanya Bodell on Behalf of the Massachusetts Attorney General," June 13, 2016.
  - "Surrebuttal Testimony of Tanya Bodell on Behalf of the Massachusetts Attorney General," July 12, 2016.
- Benefits analysis of the Towantic Energy Center, Testimony before the Connecticut Siting Council, Docket No. 192: An Application by Towantic Energy, LLC For a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Proposed Electric Generating Facility Located North of the Prokop Road and Towantic Hill Road Intersection in the Town of Oxford, Connecticut Petition of CPV Towantic, LCC (f.k.a. Towantic Energy, LLC) to Reopen and Modify the Decision in Docket No. 192 Due to Changed Conditions. Report submitted October 2014 in conjunction with Concentric Energy Advisors, Inc.
- "Analysis and Cost Comparison of Renewable Power in California," Testimony before the Little Hoover Commission, Sacramento, CA, February 28, 2012.
- "Prepared Direct Testimony of Tanya L. Bodell on Behalf of Atlantic Path 15, LLC," Before the Federal Energy Regulatory Commission, Atlantic Path 15, LLC, Docket No. ER11-2909-000, submitted February 18, 2011.

ADVISORY SERVICES

Tanya interacts directly with executives, corporate boards, investors and senior management of energy companies, adding value through business strategy, market assessments, transaction support, valuations, and regulatory policy. Selected services and assignments cover all facets of the power sector, including renewables and energy storage, as well as aspects of the natural gas, liquified natural gas, coal, and oil sectors.

Business Strategy

For energy technology start-ups and established energy companies, Tanya develops strategy for expansion into new businesses, technologies and market segments, including advice on the regulatory structures, government support and entry strategies for investments in commercial transmission, energy storage solutions and renewable resources. Her advisory services focus on new entry strategy and commercialization, market assessments, target identification, strategic partners, mergers/acquisitions, and timing/type of potential exits under alternative commercialization strategies. Specific technologies for which Tanya has provided strategic advice include:

- **Renewable Generation:** For international companies focused on wind and solar technologies, Tanya has assisted with education, entry strategy, regional assessments, and identification of merger/acquisition targets to facilitate entry into U.S. markets.
- **Energy Storage:** For a number of energy storage technology start-ups, Tanya has served as an advisor, assisting with market valuations, cost-benefit analyses, target markets and entry strategy. The energy storage technologies that she has advised include long-duration thermal storage, battery energy storage systems, hydroelectric pumped storage, waste-to-energy systems, and hydrogen.

- **Transmission and Smart Grid Technology**: For transmission technology companies, independent transmission developers, and transmission enablers, she has identified potential investment opportunities, pathways to commercialization, and new entrant opportunities.
- **Microgrids**: Tanya has worked with technology providers and the utilities to develop potential microgrids to improve reliability and resiliency.
- **Hydrogen**: Tanya has served as an advisor for a new hydrogen fuel producer, assisting them with understanding U.S. power sector and natural gas markets to develop an informed commercialization strategy. Her role includes tracking hydrogen hub funding and stakeholders along with facilitating introductions and meetings with other potential partnerships.

Business Valuation and Acquisition Strategy

Tanya provides independent asset valuations and acquisition strategy for investors in the energy industries.

- She serves as an independent expert to estimate the appropriate cost of capital for assets under dispute as part of regulatory, litigation and valuation projects.
- For energy storage companies, advises on market entry strategy, market benefits including price and carbon emissions reductions, portfolio of value propositions, and potential value of proposed projects.
- For developers and asset owners of generation and transmission projects, performs benefits study of the plant's impact on environmental emissions and energy prices in the region.
- Serves as an independent appraiser for valuation, transaction support, and disputes, including appraisals of traditional power generation assets, cogeneration facilities, natural gas assets, and renewable power portfolios.
- For new entrants and emerging players, values enterprises, power assets, power purchase agreements, tolling arrangements, and trade books.
- Provides utilities and independent power producers with due diligence and advice relating to power purchase agreements, contract renegotiations, merchant plant investment opportunities and valuation of non-utility generation assets.

Renewable Resources

Tanya's work for renewables includes advice to developers and expert testimony on benefits and costs of new renewable projects, as well as renewable portfolio assessments.

- Assesses value of wind farms and renewable generation assets as merchant and contracted facilities, and incorporates the impact of such assets into market dynamics.
- Applies understanding of environmental attribute markets and regulations, including production tax credit, investment tax credit, net metering credits, RPS requirements. design and implementation of generation information system tracking systems and markets for renewable energy credits.

StoneTurn

- Served as key litigation strategist for a client defending against a nearly $1 billion damages claim related to alleged breach of wind turbine supply agreements. Responsible for managing the entire project, including two testifying experts, overseeing research on markets turbine and nacelle prices, availability, market conditions, discovery and damages.
- Advised the Ontario Ministry of Science and Technology on policy to promote green power and renewable resource development.
- For a commercial company located in Massachusetts, analyzed the costs, benefits and risks of pursuing installation of solar energy arrays under the state and federal regulatory regime, assisting the owner with soliciting potential developers.

Energy Storage

Tanya has developed strategic plans, originated business opportunities, and assessed the value of microgrids and energy storage opportunities.

- Performs market valuation of energy storage assets using market prices under different volatility assumptions and using production cost model projections, including short-term and long-duration storage technologies.
- Projects project benefits to that broader system, including reduction in electricity prices, carbon emissions and recapture of overgeneration.
- Provides updates on regulatory rules relating to energy storage facilities.
- Applies deep understanding of alternative energy storage technologies, including pumped storage, long-duration storage, batteries, flywheels and hydrogen-based storage technologies and their role in electricity markets.
- Designs high-level strategic framework and cost-effective microgrid design for municipality looking to improve its reliability and resiliency which achieving its carbon emission reduction goals.
- Assesses the potential benefits of contracted energy storage to system prices, carbon emissions and winter resiliency.

Transmission

Tanya has been involved extensively in long-distance transmission lines and independent transmission businesses, providing new entrant strategy and transaction support for investments in US commercial transmission, advising transmission developers on potential markets, customer acquisition, regulatory strategy and financing options.

- For a generation association, analyzed the sources and uses of a proposed high voltage direct current transmission line into New York City, including the potential impacts on power flows.
- For a consortium of generators, analyzed the costs and benefits associated with building a new high voltage direct current transmission line from Canada into the Northeast.
- For a multi-billion dollar international transmission company, provided strategic advice on market structure, regulatory organization and strategy, investment opportunities, and asset acquisition opportunities.

- For a large rail company, advised on potential use of existing rights of way for development of transmission lines, including advice on specific transmission opportunities, identification of strategic regions and potential partners.
- For a multi-billion utility, advised on their commercial transmission strategy and development opportunities.
- For a multi-billion dollar oil and gas pipeline company interested in expanding their energy transportation portfolio into electric transmission, provided new entry strategy and successfully presented to the Board, launching the firm's initiative to develop a commercial transmission business in North America.
- For a large utility interested in pursuing a commercial transmission business, provided strategic advice on regions, strategic partners and target projects, including bidding strategy on acquisition of an operational transmission line.
- For the triennial rate review of a transmission upgrade in California, submitted expert testimony on the benefits of the transmission upgrade.
- For a transmission line under development in the southwest, assessed the size and potential markets for transmission service.
- For large utilities interested in developing a commercial transmission business, advised on entry strategy, potential acquisitions, and performed due diligence on specific acquisition targets.
- On behalf of an independent transmission company, assessed transmission asset acquisitions valued at over a billion dollars.
- Advised generation owner on regulatory strategy to create independent transmission company for purposes of developing high voltage interconnection (1,000 MW of capacity).

Competitive Procurement

Tanya has helped billion-dollar companies to design and implement competitive procurement processes for energy and energy assets.

- Designs and manages competitive procurement processes, including review of power procurement agreement, credit requirements, request for proposal process, and auction.
- Designs and manages transmission open season and bilateral negotiations for transmission capacity.
- Assesses long-term and short-term gas contracts in the context of hedging plays against other energy contracts, including tolling agreements and long-term power purchase agreements.

Corporate Restructuring

Tanya advises all aspects of the capital structure on valuation of power generation and delivery assets and securitization options in high-profile restructurings in the electricity industry.

- For the Oversight Committee of Puerto Rico, assessed the date of insolvency for the Puerto Rico electric utility (PREPA), the Commonwealth and a number of other government entities.

- For the ad hoc equity committee of a large renewable developer, provided valuation insight into the remaining assets and advice on potential strategies to pursue to obtain standing as an official equity committee.
- For investors in a large Texas utility with a significant competitive generation portfolio, provided pre-bankruptcy filing advice regarding generation asset valuation and impacts of proposed market changes pertaining to Interim Solution B+.
- For the unsecured creditors committee of a bankrupt portfolio of coal plants located in New York, provided industry expertise, valuation, market assessments, and settlement advice.
- For the unsecured creditors committee of a bankrupt coal plant located in New England, provided industry expertise, valuation, power contract assessment, damages calculations, market assessments, and settlement advice.
- For the bondholders of a waste coal facility undergoing restructuring in Pennsylvania, provided project valuation, assessed project cash flows and debt capacity, interfaced with the company's financial advisor, and advised on changing market conditions.
- For the Enron estate, analyzed insolvency analyses under the three legal tests: balance sheet, cash flow and capital adequacy. Analyses included assessing the tradebook for purposes of identifying debt-like transactions and performing cash flow projections of debt repayment and capital requirements. Analyzed tradebook entries, energy contracts, and hundreds of legal documents to rebook more than $3.5 billion of off-balance sheet transactions for purposes of understanding when the company was insolvent. Settlement with various parties totaled more than $6 billion.
- For a bankrupt tradebook, developed summary synopses on mark-to-market accounting and the marketable value of trade books and examines trader activities for market manipulation and non-compliance with regulatory requirements. Tanya also has analyzed tradebook entries, energy contracts, and hundreds of legal documents to rebook off-balance sheet transactions into the financial statements of a bankrupt energy market's estate.
- For a large, publicly-traded energy marketer, Tanya reviewed tradebook for wash trades and market manipulation, revalued tradebook and assessed controls on trading operations before and after conveyance.

Market Assessments and Electricity Market Design

- Tanya understands the economic underpinnings of competition, economic incentives and market rules for both competitive wholesale and retail markets. Tanya regularly performs market assessments of wholesale energy and capacity markets for market participants, including assessment of the impact of alternative market rules and regulations and strategic advice for regulatory positioning.
- Develops and directs analyses of market conditions using locational marginal pricing market models, zonal prices and industry data.
- Advises on policy recommendations concerning market design and implementation, and authors white papers and expert testimony regarding research and findings.
- Economic expert to market participant trade associations across multiple northeast electricity markets on market rule changes submitted to FERC, including for ISO-NE and PJM.

- Served as a key advisor to the Singapore Public Utilities Board (subsequently Energy Markets Authority) on developing a competitive wholesale and retail electricity market, including market rules, licenses and codes (2000-2004) and primary advisor and project manager to the Ontario Market Design Committee, Ontario Energy Board, Ministry of Energy, Science and Technology and market participants on competitive market design, regulatory structure, environmental policy and risk management (1998 - 2001).

PUBLICATIONS

- "Greenwashing, Greenhushing, And Greenbashing: Risks And Perils", Client Alert, October 2023
- "How Evolving ESG Disclosure Regulations Impact You", Client Alert, October 2023
- "Greenhouse Gas Reductions: Finding Your Way Forward", Client Alert, October 2023
- "Carbon Inventories: California Here We Come!", Client Alert, October 2023
- "ESG Is A Four Act Play And Intermission Is About To End:, Client Alert, October 2023
- "Why Energy Trading Cos. Must Review Electronic Comms Policy", Law360, September 2023
- "The Widening New Zero: Why Your Company May Have To Start Accounting For Carbon" Client Alert, August 2023
- "How Data Centers Facilitate The Clean Energy Transition And Help Grid Reliability", Power Grid International, July 2023
- "Full Disclosure: It Is Time To Come Clean On Crypto's Wash Trades", Client Alert, March 2023
- "Full Disclosure: Banking ESG – Ode To Good Governance", Client Alert, March 2023

Column in Electric Light & Power and Executive Digest, Pennwell Publications

- "The Almighty Load: How Electricity is Finding a New Religion," November/December 2019
- "Beware the Green Badge of Courage," September/October 2019
- "The Role of Retail in Renewables" July/August 2019
- "The Story on Storage: Is it Truly Charging Ahead?" May/June 2019
- "Hey Google! How Much does my Energy Cost?" March/April 2019
- "Realizing Carbon Reduction Goals: Assessing the Merits of Carbon Tax," January/February 2019
- "The Evolution of Resiliency: Will the Frog Turn into a Prince?" November/December 2018
- "Imagine a Market that . . ." September/October 2018
- "Is the Great Experiment of Wholesale Electricity Competition Ending?" May/June 2018
- "Leveling the Playing Field for Storage: Can Markets Figure It Out?" March/April 2018
- "Big Data, Bit Coin and Blockchain: How will Energy Cash In?" January/February 2018
- "Resistance to Resilience: ISO/RTO Response to DOE's NOPR," November/December 2017
- "Is your SCADA System Safe?" September/October 2017
- "So What's in Your Grid Modernization Plan?" July/August 2017
- "Nuclear Friction: Challenging the Economic Rationale of State Support," May/June 2017
- "Valuing Lost Load: How the Economics have Changed," March/April 2017
- "Digitizing Electrons: How are You Incorporating the Digital Economy into Utility Operations?" January/February 2017

- "What You Can Do to Decrease Operational Risk Part II: Securing your Supply Chain," November/December 2016
- "How Operational Risk is Increasing and What you Can Do About It: Part I," September/October 2016
- "Living on the Edge: Seeing Things in a Different Way to Transform the Grid," July/August 2016
- "Listening to the Supremes: Impacts of Judicial Decisions on Power Markets," May/June 2016
- "When will Oil Prices Recover? Three Economic Theories Provide Different Answers," January/February 2016
- "The Internet of Things: Where the Power Sector Connects," November/December 2015
- "A Synopsis of Changes in the Finalized Clean Power Plan," September/October 2015
- "Priming the Power Sector: Will Performance Pay?" July/August 2015
- "Pay Attention to the Man behind the Meter," March/April 2015
- "2015 in Preview: Harbingers Ring in the New Year," January/February 2015
- "What do Lower Oil Prices Mean for the Power Sector?" November/December 2014
- "For Sail: Mega Merger Tactics in the Electricity Industry," September/October 2014
- "Who's on First? Ongoing Challenges to FERC's Jurisdiction," July/August 2014
- "How Big Data is Becoming a Bigger Deal for the Power Sector," May/June 2014
- "Transformative Technologies to Watch During the Next 2 Years," March/April 2014
- "Why Google Bought Nest for $2.3 Billion," January/February 2014

Column in Natural Gas & Electricity, Wiley Periodicals, Inc., a Wiley Publication

- "Shale's Big Impact on US Manufacturing: Boom or Bust?" November 2014
- "Why Virtual Pipelines Transporting CNG are becoming a Reality," August 2014
- "Parallel Play: Coordinating Natural Gas and Electricity Markets," May 2014
- "Understanding the Recent Volley in Natural Gas Prices," March 2014
- "Outlook – Spark Spreads, Dark Spreads, and Bed Spreads Showing Cutthroat Competition," January 2014
- "NGLs versus LNG: The Fight of the Century," November 2013
- "Natural Gas Could Bring Overseas Jobs Back to the United States," October 2013
- "Pop Go Gas Prices: Has the Market Recovered?" July 2013
- "Waste Makes Haste: Low-Cost Power Plants Scramble to Keep Pace," May 2013
- "Price Impacts of Regulating the Worldwide Fracking Frenzy," March 2013
- "Natural Gas Challenges King Coal: Check or Checkmate?" January 2013
- "A Midsummer Night's Dream: Why Natural Gas Prices Still Sleep," November 2012
- "The Yin and Yang of Natural Gas Prices and Renewable Resources," September 2012
- "Electricity and Natural Gas Dance: It Takes More than Two to Contango," May 2012

Speaking and Presentations

Tanya is an established speaker and moderator at industry conferences, offering market insights and identification of strategic opportunities for attendees, a selection of which is below:

- "Energy Outlook," MT Forecast Conference, "Energy Trends and Transition: How the Energy Transition is Transitioning," October 10, 2024
- "Energy Outlook," MT Forecast Conference, "Energy Outlook," October 2022
- "Energy Outlook," MFG2021+MT Forecast Conference, November 4, 2021
- "The Increasingly Uncooperative Oil Industry," MT Forecast Conference, October 27, 2020
- "Projecting the Pace of a Renewable Resource Revolution," MT Forecast Conference in pre-recorded session, October 27, 2020
- "Tapping into the Power of Offshore Wind," Presentation to the Connecticut Power and Energy Society and New England Women in Energy and Environment, September 11, 2019
- "The Ever-Tightening Convergence of Power, Oil, and Gas," MT Forecast Conference, October 11, 2018
- "Ever-Expanding Opportunities in Alternative Energy," MT Forecast Conference, October 11, 2018
- "Evolving New England Energy Markets and what it Means for Consumers," New England Consumer Liaison Group, March 3, 2018
- "Natural Gas Storage in New England and the Impact of LNG on Winter Prices," New England Association of Energy Engineers, January 5, 2016
- "New England Pipeline and Transmission Infrastructure: Recent Studies," New England Electricity Restructuring Roundtable, November 20, 2015
- "Two Perspectives on the Clean Power Plan: New England vs. Texas," Infocast 2nd EPA Clean Power Plan Implementation Summit Multi-State Perspectives, Plans and Implications of 111(d), October 20, 2015
- "Future of Energy Development: Energy Trends and Opportunities," Global Forecasting and Marketing Conference, Association for Manufacturing Technology, October 14, 2015
- "Energy Trends and Opportunities," United States Cutting Tool Institute, Spring Meeting, May 3, 2015
- "Status of Proposed Rules," EPA Clean Power Plan Implementation: Multi-state Perspectives, Plans and Implications of 111(d), April 1, 2015
- "Energy Trends and Opportunities for the Heat Exchange Industry," Heat Exchange Institute, March 22, 2015
- "Economic Impacts of Environmental Regulations on ERCOT: Bringing it down to dollars and sense," Infocast EPA Clean Power Plan Implementation (Conference Chair and Speaker), February 25, 2015
- "Capital Expenditures in the Energy Industry," American Manufacturing Technologies Global Marketing and Forecasting Conference, October 15, 2014
- "The Future of Energy in New England," Northeast Energy Commerce Association Annual, May 14, 2014
- "Impacts on Texas Plant Valuations and Potential M&A," Infocast ERCOT Market Summit (moderator) and Pre-Summit Forum (chair and speaker), February 25, 2014
- "Energy Trends: Why Jobs, Capital Investment and Trade are Heating Up," Association for Manufacturing Technology 2013 Global Forecasting and Marketing Conference, October 16, 2013
- "Energy Trends: Pricing Trends in the Midwest," Infocast Black Gold Conference, September 20, 2013
- "Energy Markets: Pricing Trends in the Midwest," Infocast Reshoring Summit: Brining Manufacturing back to the U.S., March 12-13, 2013

- "The New Dynamics of Integrated Energy Markets," with Jamie Heller and Alan Herbst, Infocast Webinar, November 15, 2012
- "Gas-fired Power Generation as a Driver for New Demand and Pipelines," Marcellus and Utica Infrastructure Summit, Infocast Conference, Pittsburgh, PA, July 12-13, 2012
- "Competitors or Collaborators? Exploring the Interplay between Renewable Energy & Other Fuel Sources," Wall Street Renewable Energy Finance Forum, New York, June 19-20, 2012
- "Executive Briefing: Power Market Trends Impacting the Value of Power Assets," Executive Session Moderator, Power Generation Asset Financing Summit, New York, May 19-21, 2012
- "Trends Shaping the Future," Projects & Money, New Orleans, LA, January 18, 2012
- "A Brief Review of New Institutions and Structures in the Electricity Industry," Presented to the GEMI Power Conference, Houston, Texas, June 29, 2006

PROFESSIONAL AFFILIATIONS / OTHER

- Northeast Energy Commerce Association, President Emeritus
- New England Women in Energy and the Environment
- International Chamber of Commerce, Vice Chair, Center for Expertise
- Energy Bar Association, Non-legal Member
- Town of Cohasset
  Alternative Energy Committee, Chair (2010 – 2013; 2019 – present)
  Advisory Committee (2013 - 2019)

PRIOR POSITIONS

- Energyzt, Executive Director
- FTI Consulting, Managing Director
- Charles River Associates, Inc. (CRA International), Vice President/Principal
- Putnam, Hayes & Bartlett, Principal/Senior Associate/Associate

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
Chapter 11, Case No. 24-90377 (MI), Adversary No. 25-03025 (MI)
Declaration of Tanya Bodell

EXHIBIT B
DOCUMENTS RELIED UPON

Case Filings, Depositions, Expert Reports

- IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION In re: ZACHRY HOLDINGS, INC., *et al.*,1 Debtors., Chapter 11, Case No. 24-90377 (MI) (Jointly Administered):
  - ORDER GRANTING COMPLEX CHAPTER 11 BANKRUPTCY CASES TREATMENT, Case 24-90377 Document 23 Filed in TXSB on 05/21/24.
  - OMAHA PUBLIC POWER DISTRICT'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM, Case 24-90377 Document 2176 Filed in TXSB on 02/14/25.
  - ORDER GRANTING OMAHA PUBLIC POWER DISTRICT'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM, Case 24-90377 Document 2176-1 Filed in TXSB on 02/14/25.
  - DECLARATION OF MOHSIN Y. MEGHJI IN SUPPORT OF THE DEBTORS' SETTLEMENT AND ASSUMPTION MOTION, Case 24-90377 Document 810 Filed in TXSB on 08/26/24.
- ENGINEER, PROCURE, AND CONSTRUCT CONTRACT FOR OMAHA PUBLIC POWER DISTRICT STANDING BEAR LAKE AND TURTLE CREEK GENERATING STATIONS, CONTRACT NO. 263406, September 21, 2021, Omaha Public Power District, Zachry Industrial Inc., and the following Exhibits:
  - EXHIBIT D, PROCUREMENT AGREEMENT, 2021, Omaha Public Power District, Siemens Energy, Inc., CTR 236406.
  - EXHIBIT D, CONTRACT 261740, PROCUREMENT AGREEMENT FOR RECIPROCATING INTERNAL COMBUSTION ENGINES FOR OPPD'S STANDING BEAR LAKE STATION, June 30, 2021, Omaha Public Power District, Wärtsilä North America, Inc., CTR 236406.
  - EXHIBIT E, GUARANTEED COMPLETION DATES AND PROJECT SCHEDULES, CTR 236406.
  - EXHIBIT F, PERFORMANCE GUARANTEES, CTR 236406.
  - EXHIBIT G, MILESTONE PAYMENT SCHEDULES, CTR 236406.
- AMENDMENT NO. 1 to Contract No. 263406, November 9, 2023, Omaha Public Power District, Zachry Industrial Inc.
- AMENDMENT NO. 2 TO ENGINEER, PROCURE, AND CONSTRUCT CONTRACT FOR OMAHA PUBLIC POWER DISTRICT STANDING BEAR LAKE AND TURTLE

CREEK GENERATING STATIONS (CONTRACT NO. 263406), August 13, 2024, Omaha Public Power District, Zachry Industrial Inc.

- Omaha Public Power District, 2023 GENERATION ADDITION, ENGINEER, PROCURE, CONSTRUCT, EXHIBIT B – TECHNICAL SPECIFICATION, Exhibit B – Specification M0102, CTR 236406.
- SIEMENS energy, SCOPE OF SUPPLY AND DIVISION OF RESPONSIBILITY, OPPD Peaking Plant, SGT6-5000F, 2020, CTR 236406.
- Wärtsilä, Exhibit A1, Scope of supply list, Project Name: OPPD, Customer: Omaha Public Power District, April 9, 2021, CTR 236406.
- SIEMENS energy, SGT6-500F Constructability, March 2021, CTR 236406.
- Wärtsilä, IDM A00 Wartsila Integrated Commissioning Procedure for EEQ Project type, Wartsila Integrated Commissioning Procedures, CTR 236406.
- Wärtsilä, Omaha Public Power District, Project name: OPPD, Quotation number: PQ2020-01611A13R-, Date: April 9, 2021, Power generation project, Product type: Modular power plant, Engine configuration 9 X W18V50DF, Wärtsilä, April 9, 2021, CTR 236406.

Publicly Available Materials

- Damages Methodology
    - Mark A. Allen, Robert E. Hall, and Vicotria A. Lazear, National Academies of Sciences, Engineering, and Medicine. 2011. Reference Manual on Scientific Evidence: Third Edition. Washington, DC: The National Academies Press. https://doi.org/10.17226/13163. "Reference Guide on Estimation of Economic Damages." National Academies of Sciences, Engineering, and Medicine. 2011. Reference Manual on Scientific Evidence: Third Edition. Washington, DC: The National Academies Press. https://doi.org/10.17226/13163.
    - Cornell Law School, Legal Information Institute, "32 CFR § 45.9 – Calculation of damages: economic damages," https://www.law.cornell.edu/cfr/text/32/45.9
    - Julie M. Carey, Christian Dippon, and Ralph Meghames, Global Arbitration Review, "Demystifying the damages assessment in international arbitration," June 21, 2024, https://globalarbitrationreview.com/guide/the-guide-damages-in-international-arbitration/6th-edition/article/demystifying-the-damages-assessment-in-international-arbitration
    - Elizabeth A. Evans, Roman L. Weil, "Litigation Services Handbook: The Role of the Financial Expert," Chapter 5, Sixth Edition, First published April 5, 2017, https://onlinelibrary.wiley.com/doi/abs/10.1002/9781119363194.ch5
- Federal Energy Regulatory Commission (FERC)

  - 184 FERC ¶ 61,207 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION. American Electric Power Service Corp., et al. v. Southwest Power Pool, Inc. Docket No. EL23-40-001 ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING AND SETTING ASIDE PRIOR ORDER, IN PART (Issued September 29, 2023), https://www.spp.org/documents/70245/20230929_order%20setting%20aside%20prior%20order%20in%20part%20-%20complaint%20regarding%20planning%20reserve%20margin_el23-40-001.pdf
  - 185 FERC ¶ 61,159 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION Before Commissioners: Willie L. Phillips, Acting Chairman; Allison Clements, and Mark C. Christie. Southwest Power Pool, Inc. Docket No. ER23-2781-000 ORDER REJECTING TARIFF REVISIONS (Issued November 30, 2023), , https://www.spp.org/documents/70636/20231130_order%20rejecting%20tariff%20revisions%20-%20revisions%20to%20add%20winter%20season%20resource%20adequacy%20requirement_er23-2781-000.pdf
- Harris, Michelle, "RE: Southwest Power Pool, Inc., Docket No. ER23-636-_ Submission of Response to Request for Additional Information", February 16, 2023, Southwest Power Pool (SPP), https://spp.org/documents/68838/20230216_deficiency%20response%20-%20revisions%20to%20add%20a%20process%20to%20allow%20an%20exemption%20of%20the%20deficiency%20payment_er23-636-001.pdf
- Metropolitan Utilities District (MUD), 2023 Annual Report, https://www.mudomaha.com/wp-content/uploads/2024/04/RPT_MUD_ANNUAL_2023_FINAL.pdf
- Midcontinent Independent System Operator (MISO)
  - MISO's 2024 capacity auction results: insights and analysis, May 17, 2024, https://www.enelnorthamerica.com/insights/blogs/miso-2024-capacity-auction-results
  - MISO, Planning Resource Auction, Results for Planning Year 2024-25, April 25, 2024, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%20202404256 32665.pdf
  - MISO, Resource Adequacy Subcommittee (RASC), "MISO Cost of New Entry (CONE) and Net CONE Calculation for Planning Year 2025/26," September 23, 2024, p. 18, https://cdn.misoenergy.org/20240923%20RASC%20Item%2003%20CONE%20and%20Net%20CONE%20Update649247.pdf

- North American Electric Reliability Corporation (NERC)
  - NERC, Appendix 5B, Statement of Compliance Registry Criteria, Revision 8, Effective: June 27, 2024, www.nerc.com/AboutNERC/RulesOfProcedure/Appendix%205B%20eff%20202 40627_signed.pdf
  - NERC, NERC Active Compliance Registry Matrix as of April 22, 2025, https://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NE RC_Compliance_Registry_Matrix_Excel.xlsx
  - NERC, "2024/25 Winter Reliability Assessment," November 2024, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_ WRA_2024.pdf
  - NERC, 2024 Long-Term Reliability Assessment, December 2024, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_L ong%20Term%20Reliability%20Assessment_2024.pdf
- Southwest Power Pool (SPP)
  - SPP, Interconnection Facilities Study Report, GEN-2020-043, September 2022, GEN-2020-043 Facility Study FINAL.pdf
  - SPP, Interconnection Facilities Study Report, GEN-2020-043, September 2022, GEN-2020-043 Facility Study FINAL.pdf
  - SPP, Market Monitoring Unit, "State of the Market - Summer 2024," Published October 29, 2024, Updated October 31, 2024, www.spp.org/documents/72602/spp_mmu_qsom_summer_2024_v2.pdf
  - SPP, Market Monitoring Unit, "State of the Market: Winter 2025," April 15, 2025, https://www.spp.org/documents/73643/spp%20mmu%20qsom%20winter%20202 5%20v2.pdf
  - SPP, "Members & Market Participants,", https://www.spp.org/about-us/members-market-participants/ (Accessed: 4/21/2025)
  - SPP, Open Access Transmission Tariff, Sixth Revised Volume No. 1 – Attachment AA Resource Adequacy, Effective Date: 7/1/2018, https://spp.org/documents/58597/attachment%20aa%20tariff.pdf
  - SPP, "SPP board approves new planning reserve margins to protect against high winter, summer use," August 6, 2024, www.spp.org/news-list/spp-board-approves-new-planning-reserve-margins-to-protect-against-high-winter-summer-use/ (Accessed: 4/21/2025)
  - SPP, "SPP Projects Confidence in Meeting Energy Needs This Winter," November 19, 2024, https://www.spp.org/news-list/spp-projects-confidence-in-meeting-energy-needs-this-winter/

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EXHIBIT C: Acronyms

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EXHIBIT C
ACRONYMS

Acronym	Definition
AEO	Annual Energy Outlook, refers to an annual report published by the U.S. Energy Information Administration (EIA) in accordance with the Department of Energy Organization Act of 1977, which requires the EIA to prepare an annual report that contains trends and projections of the energy consumption and supply
AS	Ancillary Services, refers to the services necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system. The Integrated Marketplace will set prices for certain ancillary services such as Operating Reserves, as part of both the Day-Ahead Market and the Real-Time Balancing Market
Btu	British Thermal Units, a common metric for natural gas volume traded on the wholesale market
CONE	Cost of New Entry, calculated by SPP as part of the basis for assessing penalties on market participants that fail to meet their RAR. CONE is based on the estimated annual capital and fixed operating costs of a hypothetical natural gas-fired peaking facility, and the CONE value is set forth in the Tariff. Id. § 13.0 (Cost of New Entry) (0.0.0). The CONE reflects the long-run marginal cost of new entry and is an economic concept used in multiple capacity markets including ISO-NE, MISO, NYISO, and PJM
CT	Combustion Turbine, the generation technology that OPPD procured from Siemens for the Turtle Creek Station
DP	Distribution Provider per NERC definition, meaning "Provides and operates the "wires" between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider . . ."
EIA	Energy Information Administration, the statistical and analytical agency within the U.S. Department of Energy, which collects, analyzes, and disseminates independent and impartial energy information to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment
EPC	Engineer, Procure, and Construct, referenced with respect to the Original EPC Contract, First Amended EPC Contract, and Second Amended EPC Contract between OPPD and Zachry

Acronym	Definition
ERCOT	Electricity Reliability Council of Texas, which operates the transmission system and wholesale electricity markets to the South of SPP in a subset of Texas
FERC	Federal Energy Regulatory Commission, the federal agency responsible for regulating oil and gas pipelines and markets, interstate and independent transmission, and wholesale electricity markets
GO	Generation Owner per NERC definition, meaning "The entity that: 1) owns and maintains generating Facility(ies) (Category 1 GO); or 2) owns and maintains non-BES inverter based generating resources that either have or contribute to an aggregate nameplate capacity of greater than or equal to 20 MVA, connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage greater than or equal to 60 kV (Category 2 GOP)."
GOP	Generation Operator per NERC definition, meaning "The entity that: 1) operates generating Facility(ies) and performs the functions of supplying energy and Interconnected Operations Services (Category 1 GOP); or 2) operates non-BES inverter based generating resources that either have or contribute to an aggregate nameplate capacity of greater than or equal to 20 MVA, connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage greater than or equal to 60 kV (Category 2 GOP)."
GW	Gigawatt, measure of electric power equal to 1,000 MW used to describe the capacity of wholesale electrical systems
ICE	Intercontinental Exchange, Inc, operates a global financial exchanges and clearing houses and provides data and listing services on futures settlements for energy and environmental products in the U.S.
ISO	Independent System Operator, responsible for operating the high-voltage electrical transmission system and wholesale electricity markets
ISO-NE	Independent System Operator of New England, which operates the transmission system and wholesale electricity markets in New England, including Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, and most of Maine
kW	Kilowatt, a measure of instantaneous energy that is 1 thousand watts and typically used to measure power capacities on small scale
kWh	Kilowatt-hour, a measure of energy produced by 1 KW for an hour
kW-month	Kilowatt-month, a measure of capacity in kilowatts available on a monthly basis

Acronym	Definition
LMP	Locational Marginal Price, the market-clearing price for energy at a given price node equivalent to the marginal cost of serving demand at the price node while meeting SPP Operating Reserve requirements
LRE	Load Responsible Entity, including regulated utilities, self-regulated municipalities and public power districts, and competitive retailers who are responsible for serving customer demand for electricity
MISO	Mid-Continent Independent System Operator, which operates the transmission system and wholesale electricity markets in a subset of midwestern states to the east of SPP
mmBtu	Million British Thermal Units, a common metric for natural gas volume traded on the wholesale market
MUD	Metropolitan Utilities District, which is a public utility location the greater Omaha area that provides natural gas and water services to the community
MW	Megawatt, a measure of instantaneous energy that is 1 million watts and 1,000 kilowatts, typically used to measure power capacities on large scale
MWh	Megawatt-hour, a measure of energy produced by 1 MW for an hour
NERC	North American Electric Reliability Corporation
Net CONE	CONE less net revenues from energy and ancillary services projected to be received by a new entrant that builds a power generation plant in the region
NGI	Natural Gas Intelligence, a provider of natural gas price transparency and key news, insights, and data for the North American energy markets
NNG	Northern Natural Gas Pipeline, a natural gas pipeline system that stretches across 11 stations, from Southern Texas to Michigan's Upper Peninsula, providing access to five of the major natural gas supply regions in North America
NYISO	New York Independent System Operator, which operates the transmission system and wholesale electricity markets in New York
OATT	Open Access Transmission Tariff, a set of rules and regulations that ensure all customers have non-discriminatory access to a utility's transmission system
OPPD	Omaha Public Power District, a public electric utility in the state of Nebraska
PJM	PJM Interconnection, LLC, which operates the transmission system and wholesale electricity markets for all or part of 13 states (including, but not limited to Pennsylvania, New Jersey and Maryland) and the District of Columbia

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Acronym	Definition
PPA	Power Purchase Agreement
PRA	Planning Resource Auction, an annual auction performed by MISO to ensure sufficient Planning Resources in each Local Resource Zone and to calculate Auction Clearing Prices for each Local Resource Zone while respecting sub-regional constraints and transmission limitations
PRM	Planned Reserve Margin, represents the amount of power utilities must have available beyond peak projected demand to guard against unplanned situations or stresses on the regional power grid
RAR	Resource Adequacy Requirement, established by SPP as an obligation imposed on the registered LREs to maintain sufficient resources given their load requirements
RICE	Reciprocating Internal Combustion Engines, the generation technology that OPPD procured from Wartsila for the Standing Bear Lake Station
RP	Resource Planner per NERC definition, meaning “The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority area
SPP	Southwest Power Pool, which operates the transmission system and wholesale electricity markets for all of Kansas and Oklahoma, as well as portions of North Texas, Nebraska, Arkansas, Iowa, Louisiana, Minnesota, Missouri, Montana, New Mexico, North Dakota, South Dakota, and Wyoming
TO	Transmission Owner per NERC definition, meaning “The entity that owns and maintains transmission Facilities.”
TOP	Transmission Operator per NERC definition, meaning “The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission Facilities.”
TP	Transmission Planner per NERC definition, meaning “The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.”
V O&M	Variable Operations and Maintenance

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EXHIBIT D: Methodology

EXHIBIT D
METHODOLOGY

This Exhibit describes the methodology used to estimate economic damages on both an ex-post and ex-ante basis.

As a general rule, economic damages is equal to what actually happened ("Actual World") less what would have happened if the harm had not occurred ("But-for World").[79] I am informed by Counsel that Nebraska law is consistent with this approach with respect to Breach of Contract:

> "the measure of damages for a breach of a contract claim is an amount that would place [the plaintiff] in as good a position as it would have enjoyed if the contract had been performed."[80]

Therefore, a proper calculation of economic damages should consider the costs that OPPD incurred in the Actual World that would have been different in the But-for World.

D.1 EX-POST ESTIMATE OF ECONOMIC DAMAGES

An ex-post estimate of economic damages uses whatever information is available up to the report date, or a date slightly prior to the report date to allow for incorporation into the analysis. An ex-post calculation of damages can be updated as of the judgment date, or a date specified by the Courts, using the same methodology and source of assumptions updated for new information

[79] Among other references in Exhibit B, see for example:

Mark A. Allen, Robert E. Hall, and Vicotria A. Lazear, National Academies of Sciences, Engineering, and Medicine. 2011. Reference Manual on Scientific Evidence: Third Edition. Washington, DC: The National Academies Press. https://doi.org/10.17226/13163. "Reference Guide on Estimation of Economic Damages." National Academies of Sciences, Engineering, and Medicine. 2011. Reference Manual on Scientific Evidence: Third Edition. Washington, DC: The National Academies Press. https://doi.org/10.17226/13163.

[80] *Infogroup, Inc. v. Database LLC*, 956 F.3d 1063, 1068 (8th Cir. 2020) (approving jury instruction so stating; citing *Bachman v. Easy Parking of America, Inc.*, 562 N.W.2d 369, 373 (Neb. 1997)).

that has become available as of the specified date. For purposes of this Declaration and calculation of damages, the ex-post date is April 15, 2025 and information available as of the date of this Declaration to inform economic damages up to April 15 is used.

The methodology for calculating economic damages is to estimate the incremental cost to OPPD due to the delay in Substantial Completion. In the absence of the Facilities, OPPD would either have: 1) Reduced sales; or 2) Higher purchase costs to procure the delayed Electricity Product. The cost is therefore equal to the quantity that the Facilities would have produced times the market price less production costs, regardless of how OPPD procured the replacement power required due to the delay. Therefore Economic Damages are as follows:

Economic Damages = Actual World less But-for World

= Higher Purchase Costs less Costs to Produce (Generate)

= Market Value less Cost to Produce

In the case of the Facilities, the Cost to Produce is the cost of producing the electricity product (e.g., energy, ancillary services, and capacity). The Market Value generally would be considered the market price times the quantity that the Facilities would have produced.

D.1.1 Economic Damages of Delayed Energy

OPPD anticipated that the Facilities would operate as peaking units and produce energy around 15 percent of the time during peak hours. Whether or not the Facilities produce energy depends on whether it is more or less economic for OPPD to procure energy from SPP's energy markets. If the SPP price for energy is higher than the variable cost of production (i.e., fuel and variable operations & maintenance costs) of the Facilities to produce energy, it would be economic for OPPD to sell energy into the SPP wholesale electricity markets. If the SPP market clearing

price is below the variable cost of the Facilities to produce, SPP would not dispatch the Facilities to produce energy. Therefore:

Energy Damages = Actual World less But-for World

= Market Price for Energy x Quantity less Cost to Generate Energy

Where:

- Market Price for Energy = Quantity of Energy x Price
- Cost to Generate = Quantity of Energy x (Natural Gas Price x Heat Rate + VOM)
- Quantity of Energy = Amount of energy the Facilities would have produced estimated based on an economic dispatch of the Facilities estimated by comparing the market price for energy to the variable cost of production (i.e., Natural Gas Price x Heat Rate + VOM)
- VOM = Variable O&M

D.1.2 Economic Damages of Delayed Ancillary Services

In general, ancillary services are required to maintain reliability of a transmission system. SPP procures ancillary services through the operating reserve market. SPP uses the operating reserve markets to ensure the amount of generation matches load on a subinterval basis. Generators automatically respond to regulation instructions in seconds while spinning and supplemental products are reserved for contingency situations and can respond to instructions within ten minutes. The Facilities were anticipated to help meet reserve requirements and supply power during peak periods.[81] The technology at both of the Facilities has fast-start and fast-ramp capabilities.[82] To the extent the Facilities can provide other ancillary services that could be

[81] OPPD, https://www.oppdcommunityconnect.com/power-with-purpose

[82] For example, the Wartsila RICE units are fast-starting capable in order to provide rapid response to fluctuations in supply and demand.

qualified and sold to SPP, economic damages associated with each type of ancillary services would be quantified as follows.

Ancillary Services Damages = Actual World less But-for World

= Market Price for AS x Quantity less Cost to Produce AS

Where:

- AS = Ancillary Services
- Market Price for Ancillary Services = SPP Market Price for each type of ancillary services x the Quantity of each type of ancillary services that the Facilities would have produced
- Prices = As reported by SPP for Regulation-Down and Spinning Reserves
- Quantity of each type of ancillary services that the Facilities would have produced can be estimated based on:
  - *OPPD Plant Capacity:* Applies the reported capacity of the two Facilities to either Regulation-Down or Spinning Reserves, based on whether they are operating or not operating.
  - *OPPD's Expectations:* OPPD's stated expectation regarding which of the Facilities would have produced ancillary services and which type.
  - *Technical Specifications vs. SPP Requirements:* Analysis of the technology specifications of each of the Facilities and whether they would qualify to provide ancillary services in the SPP markets.
  - *Market Size for Qualified Ancillary Services:* Reported actual historical amount of ancillary services of the type(s) for which the Facilities would have qualified.
  - *Market Share:* Estimated amount of market share that the Facilities would have been able to capture given other resources available in SPP to supply ancillary services.

Wartsila, https://www.wartsila.com/docs/default-source/energy-docs/technology-products/product-leaflets/wartsila-50df.pdf?sfvrsn=e9eda345_20

- Cost to Produce Ancillary Services = Conservatively assumed to be Zero if the Facilities had been operational as the capacity available to supply ancillary services would be in place with essentially the same fixed costs under the milestone payments that are similar in both the Actual and But-for Worlds.[83] Spinning reserves would incur some fuel and variable O&M, but is ignored for now.

D.1.3 Economic Damages of Delayed Capacity Value

The Facilities provide capacity and help OPPD to meet its SPP-mandated reserve requirements.

Capacity Damages = Actual World less But-for World

= Cost to Procure Capacity less Cost to Produce Capacity

Where:

- Cost to Procure Capacity = MISO capacity market price for Iowa to serve as a proxy for bilateral market prices for capacity that OPPD could buy from third parties.

- Cost to Produce Capacity = Zero, assuming the fixed costs for the Facilities are the same in both the Actual World and the But-for World.

The price for capacity for MISO's Iowa zone is used as a proxy for the bilateral price for capacity that OPPD may have entered into, which would be indicated by disclosure of transactions for capacity associated with replacing the delayed capacity from the Facilities.

D.2 EX-ANTE ESTIMATE OF ECONOMIC DAMAGES

An ex-ante estimate of economic damages establishes a "date certain" after which no new information can be used. The concept of an ex-ante approach to estimating damages is that the

[83] Although OPPD benefits from a delay in the final payments once Substantial Completion is achieved, we ignore this benefit to OPPD as a conservative assumption for now to illustrate the disparity between the Liquidated Damages and economic damages calculation.

wrongdoing tied to liability for which economic damages is being calculated sets the date of damages and any information available after that point is not relevant as the damaged party effectively has incurred the harm at that point in time. Ex-ante calculations are used to estimate damages as of an historical point in time when the wrongdoing that leads to liability is a one-time event and the harm to the damaged party is foreseeable.

In this case, economic damages are an ongoing event that can extend over multiple months due to ongoing delays past the Guaranteed Substantial Completion Date. That said, a reasonable expectation of economic damages can be calculated using estimated quantities that the Facilities could have produced, futures price data, and known pricing for market-based products that are sold on a forward basis (e.g., ancillary services and capacity).

For purposes of this Declaration, the ex-ante date is used to illustrate the ease with which a reasonable projection of economic damages could have been performed and incorporated into the Second Amended EPC Contract. Per direction of Counsel, I use August 1, 2024, the date of the Second Amended EPC Contract, to illustrate how economic damages can be forecasted on a going-forward basis using market instruments that would have allowed OPPD to hedge their exposure to a delay in the Guaranteed Substantial Completion Date using futures and forwards.

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EXHIBIT E: Assumptions

EXHIBIT E

ASSUMPTIONS

E.1 EX-POST HISTORICAL ANALYSIS

Key inputs used to calculate damages using the ex-post approach and actual prices that occurred include the following:

- Damages Period
- Plant Heat Rate
- Variable O&M
- Quantity
- Energy Price
- Ancillary Services Price
- Capacity Price

This section provides additional detail on each of these assumptions.

E.1.1 Damages Period

The calculation of economic damages is for the period beginning the day after the Guaranteed Substantial Completion Date listed in the Second Amended EPC.[84] For the Turtle Creek Station, this includes December 17, 2024 to April 15, 2025. For the Standing Bear Lake Station, this includes December 31, 2024 to April 15, 2025. The selected period encompasses the liquidated damages start date for both plants and extends to a reasonable date close to the submission of this report, when actual pricing data could still be acquired. While far past the

[84] Second Amended EPC, Section 7 and Section 8.

acceleration date to cap per Amendment No. 2, the value of April 15 serves to illustrate the extreme discrepancy between Liquidated Damages versus the economic damages OPPD incurred.

E.1.2 Variable Operations & Maintenance

These costs of running a power plant includes variable operations and maintenance ("Variable O&M") costs tied to running the equipment and can include things like consumable materials, such as lubricants and chemicals, as well repairs and maintenance. The type of plant and technology being used will also impact the amount of variable O&M incurred. While often minimal, it is an important cost component to consider when modeling a plants operation.

For purposes of the damages estimate, I apply the variable O&M expenses below to each hour when the plants are operating.

- **Turtle Creek Station:** $4.50/MWh
- **Standing Bear Lake Station:** $5.50/MWh

These assumptions are aligned with the typical variable O&M costs of similar plants in the market today.

E.1.3 Heat Rate

Heat rate is a key performance indicator and represents the efficiency of a power plant's ability to convert fuel into electricity. A plant with a higher heat rate requires more fuel to generate a unit of electricity, and thus making it less efficient. For a natural gas peaking plant, like the Facilities, the heat rate is generally higher than plants that operate more frequently, such as a natural gas combined cycle plant. This can be seen in **Figure E-1** below, which includes the average range of heat rates by plant type.

Figure E-1: Typical Heat Rates by Generation Type[85]

Unit Type	Typical Heat Rate (Btu/kWh)
Natural gas steam turbine	10,000 – 12,000
Natural gas combined cycle	6,200 – 8,000
Natural gas combustion turbine	8,000 – 10,000
Natural gas reciprocating engine	7.500 – 8,500
Coal steam turbine	9,000 – 11,000
Natural Gas Turbine with Cogeneration	5,000 – 6,500

The higher heat rate is a result of the quick start capability and infrequent operation, leading to a less efficient combustion process. The technology being used in the plant is also a key driver, as some technologies are more efficient than others, despite serving the same purpose, such as a peaking plant.

For purposes of my damage estimates, the heat rate had to be estimated since actual operational data is not available. In developing the assumption, the technology being used was a key consideration. The technologies installed at each plant are listed below:

- **Turtle Creek Station:** Combustion Turbines ("CT") consisting of two 225 MW Siemens Energy SGT6-5000F CTs (simple cycle turbines)[86]
- **Standing Bear Lake Station:** Reciprocating Internal Combustion Engines (RICE) consisting of nine 16.7 MW Wärtsilä 18V50DF RICE units[87]

Generally, a RICE unit, like the one being used in the Standing Bear Lake Station, are slightly

[85] This range reflects a generalized range for the technology type as reported by Enerdynamics, Energy Knowledgebase, https://energyknowledgebase.com/topics/heat-rate.asp

[86] OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station

[87] OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station

more efficient than a CT, like the one being used in the Turtle Creek Station. The heat rate assumption reflects this difference in technology as listed below:

- **Turtle Creek Station:** 9,000 Btu/kWh
- **Standing Bear Lake Station:** 8,000 Btu/kWh

For the Turtle Creek Station, a 9,000 heat rate reflects the mid-point of the average heat rate range and is also consistent with assumptions used by the U.S. Energy Information Administration in developing its 2025 Annual Energy Outlook (AEO).[88] For the Standing Bear Lake Station, an 8,000 heat rate reflects the mid-point of the average heat rate range and while the EIA is no longer modeling RICE units as part of its AEO, it aligns with prior assumptions used by the EIA in its past reports.[89]

The heat rate assumption used represents a conservative estimate of the heat rate the plants would likely see. Had the plants been operating at the 15% capacity factor projected by OPPD, it is likely they would have experienced slightly higher heat rates as a result of less frequent start-ups and shutdowns.[90] By applying a conservative estimate, the estimated damages represent the higher end of damages that would have likely occurred.

E.1.4 Quantity

Quantities that would have been produced under the contract are calculated on an hourly

[88] U.S. Energy Information Administration (EIA), Capital Cost and Performance Characteristics for Utility-Scale Electric Power Generating Technologies (January 2024), https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capital_cost_AEO2025.pdf

[89] EIA, Capital Cost and Performance Characteristics for Utility Scale Electric Power Generating Technologies (February 2020), https://www.eia.gov/analysis/studies/powerplants/capitalcost/pdf/capital_cost_aeo2020.pdf

[90] OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station; OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station.

basis and dispatched based on simple economics (i.e., cost of production versus gross revenue). When it is economic for each of the Facilities to operate, the hourly quantity produced is based on the capacity in Megawatts (MW) for each of the Facilities, as reported by OPPD.[91] The assumed capacity values are as follows:

- **Turtle Creek Station:** 450 MW
- **Standing Bear Lake Station:** 150 MW

The OPPD website does not specify whether the reported values are the nameplate capacity of each plant or the qualified capacity size, which is often slightly less. I therefore reviewed the SPP Interconnection Facilities Study and found that the plant sizes submitted to SPP for interconnection to the SPP system include 510 MW for the Turtle Creek Station and 169.56 for the Standing Bear Lake Station.[92] The reported values in the study represent the nameplate capacity of the plant, and not necessarily where the plant would operate.

In order to confirm the reduced values on the OPPD website are reasonable, I performed a high-level calculation of the expected generating capacity of the plants versus the reported nameplate capacity. To do this, I reduced the nameplate capacity by industry rule of thumb rates for forced and planned outages (i.e., a 10 percent reduction for forced outages and a 2.5 percent reduction for planned outages) as follows:

[91] OPPD, https://www.oppdcommunityconnect.com/standing-bear-lake-station; OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station

[92] SPP, Interconnection Facilities Study Report, GEN-2020-043, p. 1 of 52, September 2022, GEN-2020-043 Facility Study FINAL.pdf.

The SPP Interconnection Facilities Study represents a study conducted by SPP which evaluates the interconnection of the proposed facilities to determine the impact of the plants on the system, and particularly the transmission system. It represents a key step in the approval process before all proposed plants can be put into operation.

Adjusted Capacity = Nameplate Capacity X (1 – FO Rate – PO Rate)

Where: FO = Forced Outage PO = Planned Outage

The resulting value for each plant was 445.25 MW for the Turtle Creek Station and 148.37 MW for the Standing Bear Lake Station. Since these values were within a reasonable range of those reported on the OPPD website, it is reasonable to rely on the publicly reported OPPD adjusted capacity values.

As a second check for reasonableness, I also reviewed the EIA Form 860 Report, which collects generator specific information about existing and planned generators in the U.S.. The most recent Annual Report, released September 23, 2024,[93] and Electric Power Monthly Report, released April 24, 2025,[94] both list the Facilities under the planned generator section. The reports lists the Turtle Creek Station as having 528 MW Nameplate Capacity and 442.2 MW Winter and Summer Capacity. For the Standing Bear Lake Station, it is listed at 162.9 MW Nameplate Capacity and 151.2 MW Winter and Summer Capacity.[95] The close relationship between the values in the EIA 860 Report, the SPP Interconnection Report, and OPPD website give me confidence in the values used in my damage calculations.

E.1.5 Energy Price

Economic damages associated with energy are equal to the quantity times the hourly market price for electricity less the cost of production. Therefore, the price of electricity is the

[93] EIA, Form 860, https://www.eia.gov/electricity/data/eia860/

[94] EIA, Electric Power Monthly, https://www.eia.gov/electricity/monthly/

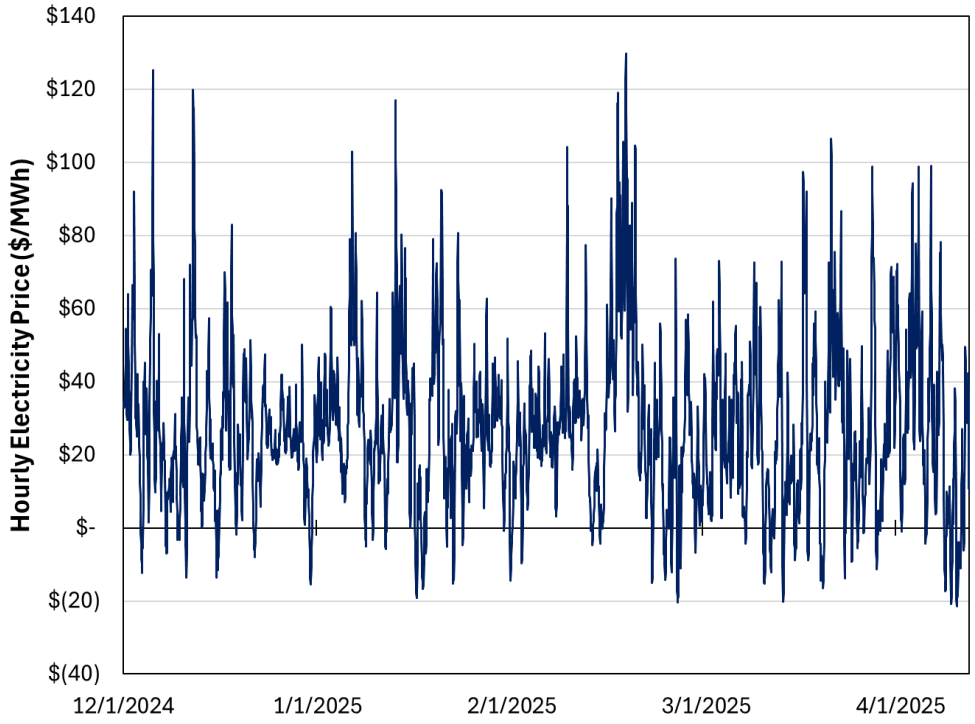
[95] The Winter and Sumer Capacity reflect the seasonal capabilities of the plant whereas the Nameplate represents the maximum possible output.

main driver of revenue. In my calculations, the market price for electricity is based on the actual SPP day-ahead locational marginal price of energy at the OPPD_OPPD settlement location (pricing node: "OPPD_LA") and was derived from daily pricing reports posted by SPP for the period of damages (i.e., December 17, 2024 – April 15, 2025).[96] Since both Turtle Creek and Standing Bear Lake were not operating during this time, a nodal price specific to the plants could not be used. Instead, the OPPD_OPPD price was used as proxy. It is my understanding that the OPPD_OPPD settlement location represents the average settlement price for load in the OPPD area, and is therefore a good representation of the average price that plants in the OPPD area could expect to receive for their power. As a cross-check, I compared the OPPD_OPPD monthly average price to the average price of 10 other pricing nodes in the OPPD area and found that the prices tracked closely, providing additional certainty on the representative price used.

Figure E-2 shows the hourly energy price at the OPPD_OPPD settlement location. By using the actual hourly price that occurred, we can produce an accurate estimate of the price OPPD would have received for its power, which takes into account market impacts like weather conditions, supply and demand.

[96] SPP, Day-Ahead Market, https://portal.spp.org/groups/day-ahead-market

Figure E-2: Historical Hourly LMP at OPPD_OPPD Settlement Point (12/1/24 – 4/15/2025)



E.1.6 Natural Gas Price

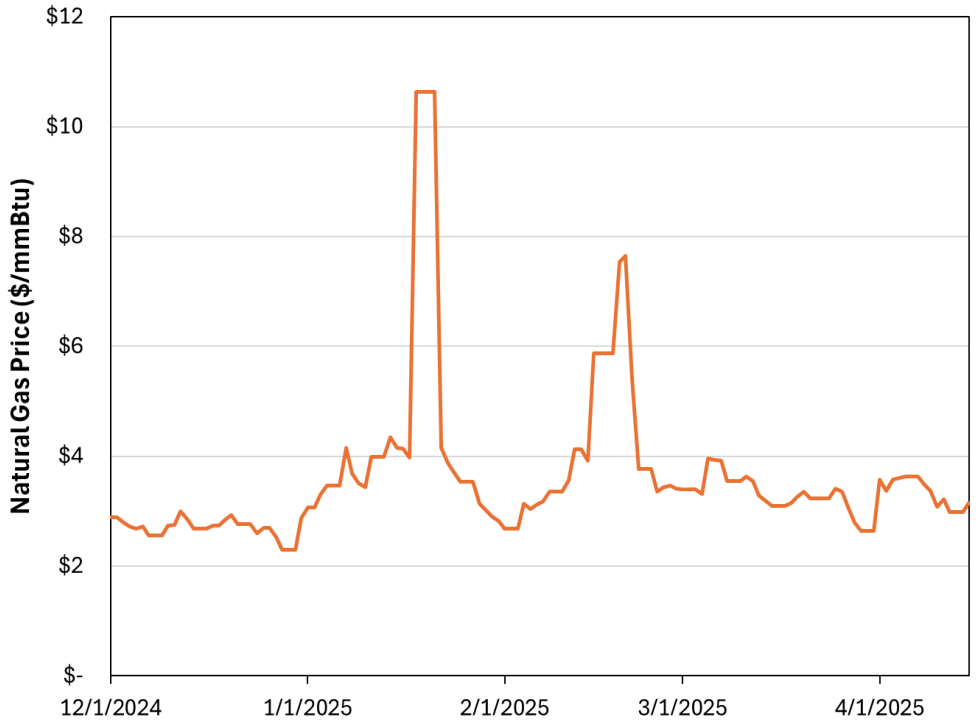
The cost of production is a key component to the estimated damages and for a natural gas peaking plant, the cost of fuel (i.e., natural gas) is the primary driver of that cost. In order to estimate fuel costs, I relied on the actual daily natural gas prices at the Northern Natural Gas Pipeline ("NNG") Demarc Hub for the damages period. The data was sourced from Natural Gas Intelligence and represents the actual daily settlement prices at the pipeline that an generator would expect to see. [97] The daily prices are produced for weekdays only, and therefore for purposes of estimating damages, the price on the last trading day trading was applied to weekends and holidays

[97] Natural Gas Intelligence (NGI), https://naturalgasintel.com/premium/daily-historical-data/

(i.e., the Friday price was applied to Saturday and Sunday).No additional adjustments were made to the daily prices for transportation of fuel from the pipeline to each plant.

Figure E-3 below shows the daily natural gas price that was applied the dispatch model. The daily price is applied to all hours in the associated day.

Figure E-3: Daily Natural Gas Price at NNG Demarc (12/1/2024 – 4/15/2025)



While there are several natural gas pipelines that pass through SPP, the NNG Demarc Hub was selected since it is the closest pipeline and hub to the Facilities.

Additionally, a review of EIA Form 860[98] data on natural gas plants in the OPPD area indicated that plants are purchasing directly from the NNG pipeline or acquiring gas through the

[98] EIA, Form 860, https://www.eia.gov/electricity/data/eia860/

Metropolitan Utilities District ("MUD"), the local utility that operates the drinking water and natural gas system for Omaha.[99] Upon further review of the MUD 2023 Annual Report,[100] MUD signed a 20 year firm transportation agreement with NNG in 2012 for purposes of providing firm natural gas transportation service to plants in the OPPD area. With MUD as the local utility providing natural gas services to the plants, pricing at the NNG Demarc Hub is an appropriate estimate to use for the cost of natural gas that both plants would have expected to see.

E.1.7 Ancillary Services Price

The hourly market clearing prices for ancillary services by product can be found on the SPP website.[101] In order to estimate damages, I apply the hourly SPP clearing prices for Regulation-Down and Spinning Reserves to the capacity of the Facilities on an hourly basis.

Since it is not possible for the Facilities to provide both types of Ancillary Services in a given hour, I adjust my calculations to provide one or the other. When it is economic for the plants to operate based on the hourly electricity price and cost of production, I assume the plants would be providing Regulation-Down services. When the plants are not operating due to economics, I assume the plants would be providing Spinning Reserves. The calculation for each service is listed below:

- **Regulation-Down Damages** = Quantity of the Facilities X Hourly Regulation-Down Price by Season

[99] Metropolitan Utilities District (MUD), About Us, https://www.mudomaha.com/about-us/

[100] MUD, 2023 Annual Report, p. 93, https://www.mudomaha.com/wp-content/uploads/2024/04/RPT_MUD_ANNUAL_2023_FINAL.pdf

[101] SPP, https://portal.spp.org/pages/da-mcp

- **Spinning Reserves Damages** = Quantity of the Facilities X Hourly Spinning Reserves Price by Season

The resulting number is then adjusted to reflect the market share of the plants, in order to estimate the actual portion of reserves that the Facilities would likely contribute to. For reasons discussed earlier in this report, it is assumed the Turtle Creek Station would provide roughly two percent of required quantity and the Standing Bear Lake Station would provide roughly one percent. The ancillary damages are adjusted accordingly.

E.1.8 Capacity Price

During Winter 2024-25, SPP had an excess of capacity and RAR.[102] This is confirmed by the NERC 2024-25 Winter Reliability Assessment which states, "SPP anticipates that planning reserves are adequate for the upcoming winter season."[103] Similarly, SPP has excess capacity through 2026.[104] As a result, the value for capacity would be expected to reflect this excess and be less than the Net CONE of a new combustion turbine unit.

To calculate the estimated damages for capacity, I relied on the Midcontinent Independent System Operator ("MISO") Zone 3 capacity prices for the 2024-25 planning year. The MISO capacity price is separated into a Winter and Spring period, and the clearing prices for

[102] SPP, SPP Projects Confidence in Meeting Energy Needs This Winter, November 19, 2024, https://www.spp.org/news-list/spp-projects-confidence-in-meeting-energy-needs-this-winter/

[103] NERC, "2024-2025 Winter Reliability Assessment," November 2024, p, 18, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_WRA_2024.pdf

[104] SPP, 2024 SPP Resource Adequacy Report, https://www.spp.org/documents/71804/2024%20spp%20june%20resource%20adequacy%20report.pdf

each period were applied to relevant months and days in the damages period. The 2024-25 Zone 3 capacity prices were as follows:[105]

- **Winter (December, January, February) =** $0.75 / MW-Day
- **Spring (March, April, May) =** $34.10 / MW-Day

The prices represent a daily capacity price that is then applied to the total megawatts of capacity each plant provides. An example of the December 2024 calculation for the Turtle Creek Station and Standing Bear Lake Station is as follows.

- **Turtle Creek Station December Capacity Value =** $0.75 X 15 Day(s) X 450 MW = $5,062.50
- **Standing Bear Lake Station December Capacity Value =** $0.75 X 1 Day(s) X 150 MW = $112.50

The MISO Zone 3 prices represent a good proxy of the bilateral price for capacity that OPPD may have entered into given its proximity to the OPPD service territory. **Figure E-4** shows the MISO Zone 3 includes the state of Iowa, which borders Nebraska and OPPD.

[105] Midcontinent Independent System Operator (MISO), Planning Resource Auction, Results for Planning Year 2024-25, p. 3, April 25, 2024, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf

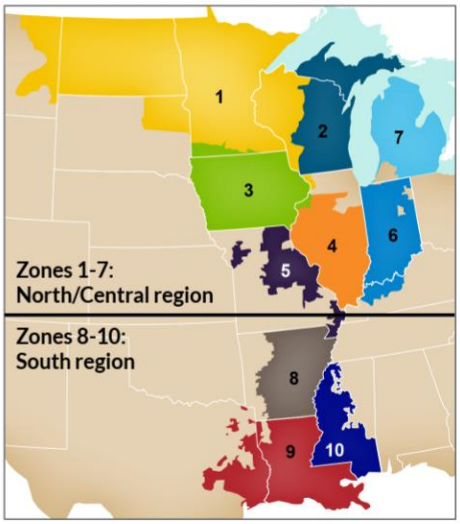
Figure E-4: MISO 2024 PRA Results and Resource Adequacy Zones[106]

2024 PRA Results

Zone	Local Balancing Authorities	Summer	Fall (Price $/MW-Day)	Winter	Spring
1	DPC, GRE, MDU, MP, NSP, OTP, SMP	30.00	15.00	0.75	34.10
2	ALTE, MGE, UPPC, WEC, WPS, MIUP	30.00	15.00	0.75	34.10
3	ALTW, MEC, MPW	30.00	15.00	0.75	34.10
4	AMIL, CWLP, SIPC, GLH	30.00	15.00	0.75	34.10
5	AMMO, CWLD	30.00	719.81	0.75	719.81
6	BREC, CIN, HE, IPL, NIPS, SIGE	30.00	15.00	0.75	34.10
7	CONS, DECO	30.00	15.00	0.75	34.10
8	EAI	30.00	15.00	0.75	34.10
9	CLEC, EES, LAFA, LAGN, LEPA	30.00	15.00	0.75	34.10
10	EMBA, SME	30.00	15.00	0.75	34.10
ERZ	KCPL, OPPD, WAUE (SPP), PJM, OVEC, LGEE, AECI, SPA, TVA	30.00	15.00	0.75	34.10

Highlighted values are CONE pricing

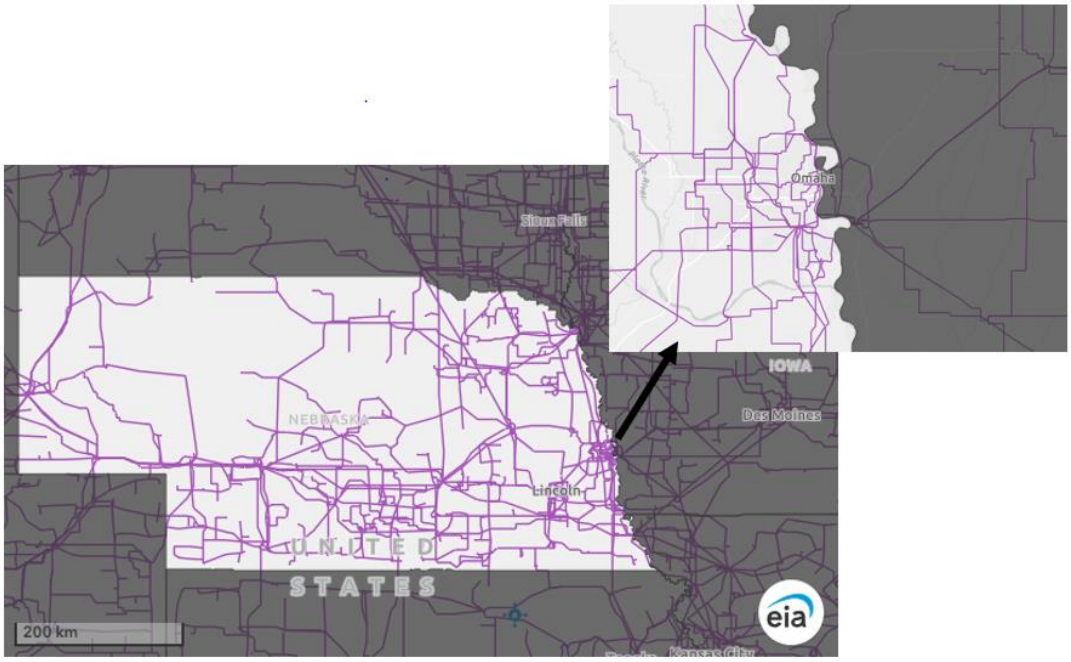
MISO Resource Adequacy Zones



To further support this assumption, I reviewed an electric power transmission map published by the U.S. EIA, which shows 345kv transmission lines directly connecting OPPD to Iowa. Through the use of these lines, OPPD would be able to sell any excess capacity from the Turtle Creek Station and Standing Bear Lake Station directly into the MISO Zone 3. **Figure E-5** provides a zoomed in look at the transmission system connecting the two areas.

[106] Ibid.

Figure E-5: Map of Electric Power Transmission Lines Between Omaha, NE and Iowa[107]

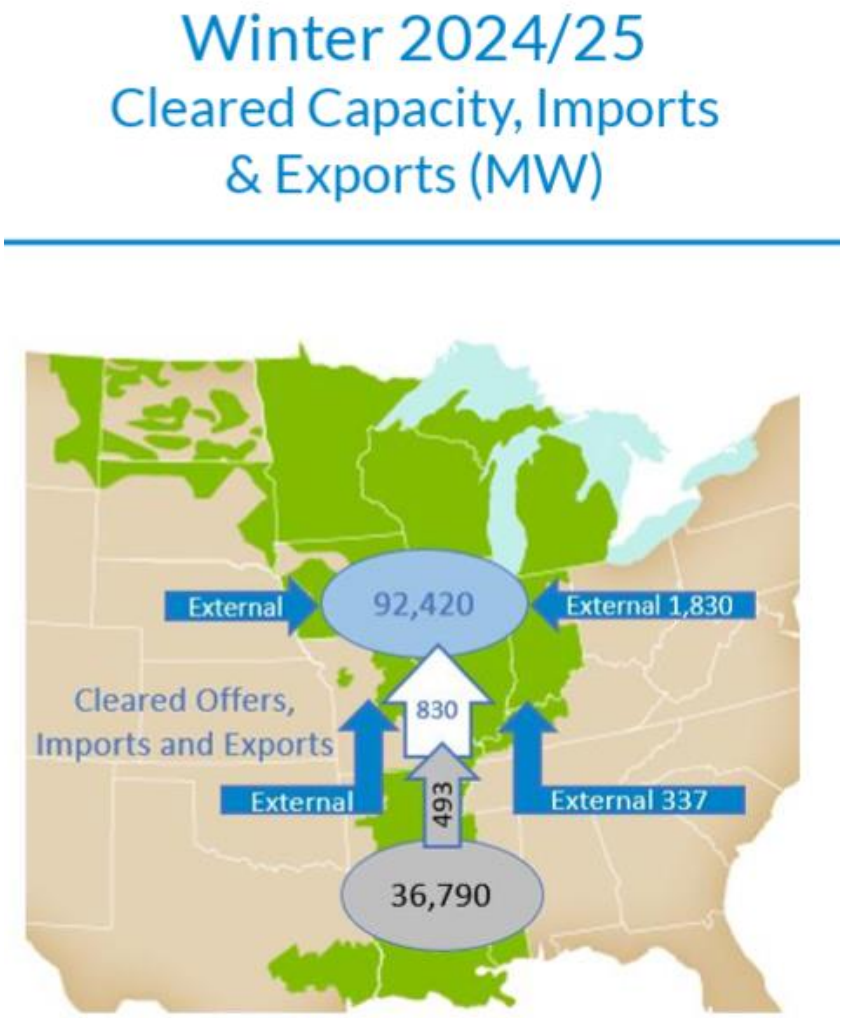


The MISO auction results report also has a map of imports and states the imports by zone for each auction period. Although there are no imports during the winter and spring period into MISO, the interconnections between SPP and MISO link the value of capacity between Nebraska and Iowa (MISO Capacity Zone 3)[108] as illustrated by **Figure E-6**, a chart produced by MISO.

[107] EIA, State Energy Profile, Nebraska, U.S. ENERGY ATLAND WITH TOTAL ENERGY LAYERS, https://www.eia.gov/state/?sid=NE

[108] Capacity Zone 3 has cleared at prices for capacity with the rest of the system. In contrast, Zone 5 has been having capacity price spikes in the Ameren Missouri and Columbia, Missouri;s municipal utility per Ethan Howland, "MISO capacity prices triple for next summer, spring, partly on power plant retirements," Utility Dive, April 26, 2024. https://www.utilitydive.com/news/miso-capacity-pra-auction-missouri/714403/ As Zone 5 is experiencing these capacity price spikes due to insufficient capacity reserves and limited ability to procure such reserves from interconnected markets, these prices are not an appropriate proxy for OPPD.

Figure E-6: MISO Illustration of Potential for Imports into Capacity Markets[109]



As a result, published capacity prices for MISO Zone 3 serve as a market price for the value of the capacity from the Facilities that failed to meet the Guaranteed Substantial Completion Date.

E.2 EX-ANTE PROJECTION AS OF AUGUST 1, 2024

Key inputs used to calculate damages under the ex-ante approach include the following:

[109] MISO, Planning Resource Auction, Results for Planning Year 2024-25, p. 31, April 25, 2024, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf

- Damages Period
- Plant Heat Rate
- Variable O&M
- Quantity
- Energy Price
- Ancillary Services Price
- Capacity Price

There are a number of the assumptions in the ex-ante approach that rely on the same values used in the ex-post approach. This includes the damages period, plant heat rate, variable O&M, quantity, ancillary services price, and capacity price. To avoid duplication, see Section E.1 for details on those assumptions. The remainder of this section provides additional details on each of the assumptions specific to the ex-ante approach.

E.2.1 Energy Price

Unlike the ex-post approach, an electricity price forecast was needed to project damages as of August 1, 2024. I therefore relied on electricity futures prices for monthly SPP North Hub Peak and Off-Peak strips, as provided by the Intercontinental Exchange.[110] The futures represent the estimated prices market participants would expect to see for their electricity at a future date. Prices were pulled as of a July 29, 2024 trade date in order to replicate what prices would have been known as of the August 1, 2024 date (Note: July 29th was the closest trade date to August 1st with available pricing data). The monthly futures prices include both peak and off-peak prices for

[110] Intercontinental Exchange (ICE), https://www.ice.com/index

the "SPP North Hub".[111] The SPP North Hub was selected since it represents the average electricity prices for the northern section of SPP, which encompasses OPPD. Futures on a more granular level, such as the OPPD area, do not exist.

The monthly futures prices were ultimately converted into hourly prices based on historical pricing shapes for the SPP North Hub. The hourly price forecasts were calculated as follows:

- **Monthly Futures Prices:** Futures prices for monthly peak and off-peak strips were pulled from ICE as of a July 29, 2024 trade date for the SPP North Hub.
- **Peak versus Off-Peak Hours:** Hours during the damages period were identified as peak versus off-peak hours according to SPP. Off-peak hours are identified as hours ending 0100-0600, 2300-2400, as well as all weekends and NERC holidays.[112] Peak hours represent the remaining hours.
- **Hourly Ratios:** Actual hourly peak and off-peak LMP prices for the SPP North Hub from 2019 to 2024 are divided by the respective monthly average price for peak and off-peak hours to produce a ratio to shape a monthly futures price.
- **Calculation:** The hourly ratio is applied to the monthly futures price to derive an hourly energy price based on futures and historical shapes.
    - **Peak Hour Prices =** Peak hourly ratio for each hour times peak monthly futures
    - **Off-Peak Hour Prices =** Off-Peak hourly ratio for each hour times off-peak

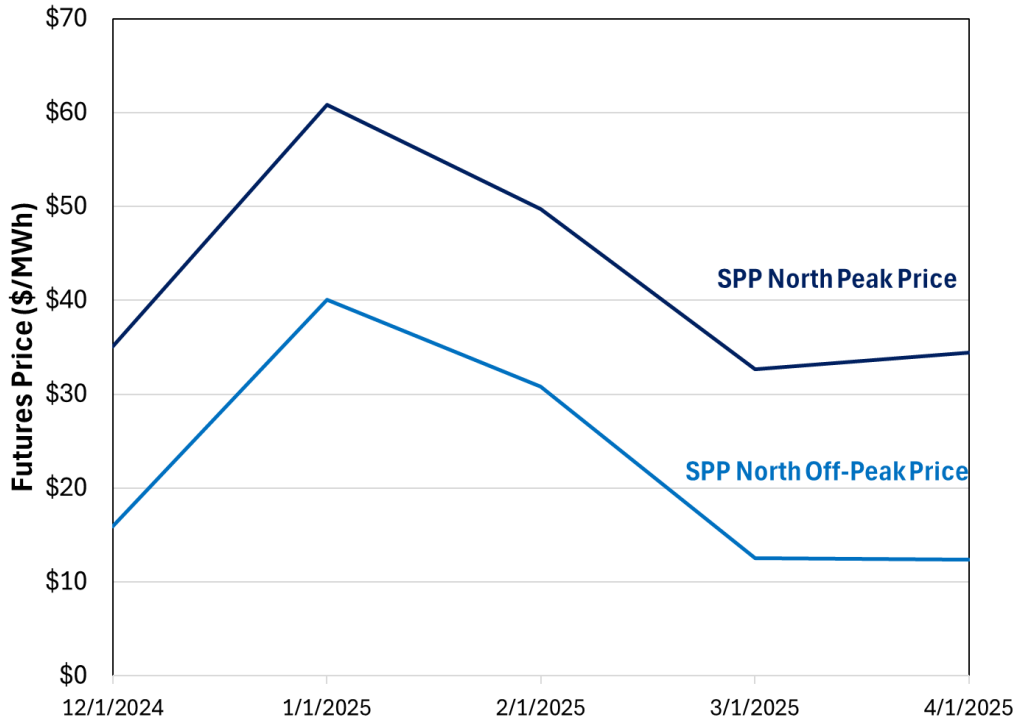
[111] ICE, SPP North Hub Day-Ahead Peak Fixed Price Future, https://www.ice.com/products/31687068/SPP-North-Hub-Day-Ahead-Peak-Fixed-Price-Future; SPP North Hub Day-Ahead Off-Peak Fixed Price Future, https://www.ice.com/products/31687069/SPP-North-Hub-Day-Ahead-Off-Peak-Fixed-Price-Future.

[112] Ibid.

monthly futures

Figure E-7 presents the monthly futures prices for SPP North as of a July 29, 2024 trade date.

Figure E-7: SPP North Peak and SPP North Off-Peak Futures Prices as of 7/29/2024



In order to account for various market conditions, five different historical shapes were calculated for the months covered by the damages calculation. This includes the following:

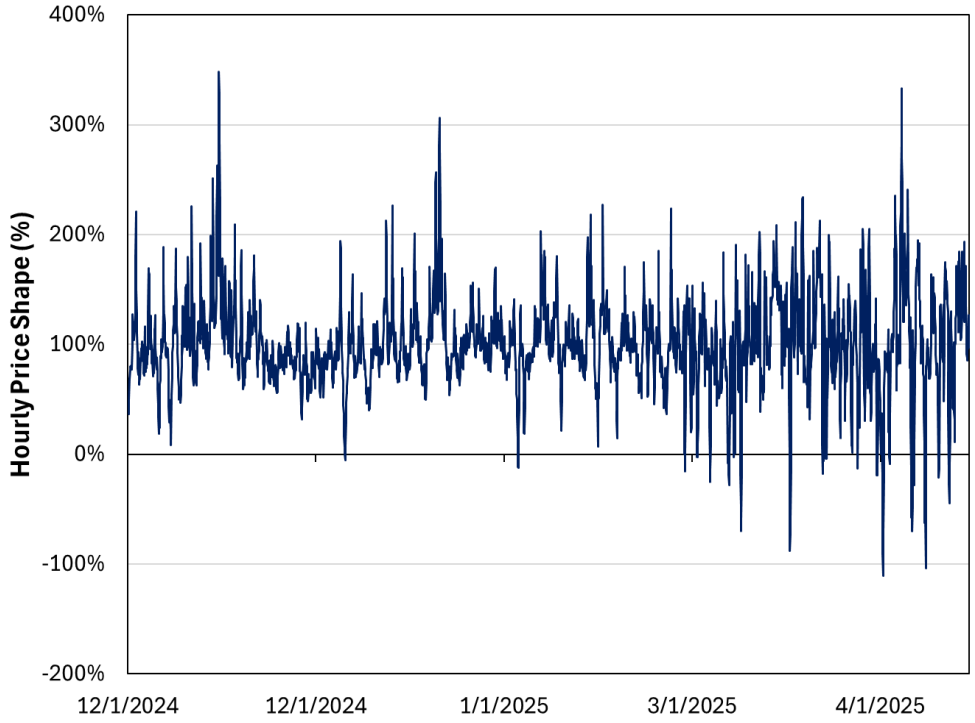
- **Shape 1:** December 2019 to April 2020
- **Shape 2:** December 2020 to April 2021
- **Shape 3:** December 2021 to April 2022
- **Shape 4:** December 2022 to April 2023
- **Shape 5:** December 2023 to April 2024

Each of the five shapes were then applied to the futures prices to generate five different price

forecasts. The forecasts were then run through the dispatch model and the average of the five results was taken.

Figure E-8 presents an example of the hourly shapes using the 2019/20 period.

Figure E-8: Hourly SPP North Price Shape for 2019/20 Scenario



E.2.2 Natural Gas Price

Similar to electricity, a forecasted natural gas price was required under the ex-ante approach. The forecast follows a similar format to that of the forecasted electricity prices, in that it relies on monthly futures strips that are then shaped by historical conditions. In the case of natural gas, monthly settlement strips were pulled from ICE for Henry Hub and the Northern Natural Gas Demarc Basis as of a July 29, 2024 trade date, for the months in the damages period.[113] The NNG

[113] ICE, Henry LD1 Fixed Price Future, https://www.ice.com/products/6590258/henry-ld1-fixed-price-future; NNG

Demarc price represents a basis to the Henry Hub price, which essentially reflects the difference in pricing from the universal pricing hub location (i.e., Henry Hub) to the point of delivery (i.e., NNG Demarc), accounting for variables like delivery costs, pipeline constraints, supply, and demand. The resulting futures price is therefore calculated by adding the Henry Hub futures price to the NNG Demarc basis. The monthly price was then converted into hourly prices based on historical pricing shapes for the NNG Demarc hub.

The hourly price forecasts were calculated as follows:

- **Monthly Futures Prices:** Futures prices were pulled from ICE as of a July 29, 2024 trade date for the Henry Hub and NNG Demarc basis products. The NNG Demarc basis was then added to the Henry Hub price.
- **Daily Ratios:** Daily natural gas prices for the NNG Demarc Hub from 2019 to 2024 are divided by the respective monthly average price to produce a ratio to shape a monthly futures price.
- **Calculation:** The daily ratio is applied to the monthly futures price to derive a daily natural gas price based on futures and historical shapes. The daily price is then converted to hourly by assuming the same price across all hours in the day.

Daily Price = Daily ratio for each day times monthly futures

To account for various market conditions, five different historical shapes were calculated for the months included in the damages calculation. This includes the following:

- **Shape 1:** December 2019 to April 2020

Demarc Basis Future, https://www.ice.com/products/6590131/NNG-Demarc-Basis-Future

- **Shape 2:** December 2020 to April 2021
- **Shape 3:** December 2021 to April 2022
- **Shape 4:** December 2022 to April 2023
- **Shape 5:** December 2023 to April 2024

Each of the five shapes were then applied to the futures prices to generate five different price forecasts. The five price forecasts were then run through the dispatch model and the average of the five results was taken. **Figure E-9** presents an example of the shaped futures using a 2019/20 price shape.

Figure E-9: Hourly Shaped Natural Gas Futures Using a 2019/20 Price Shape

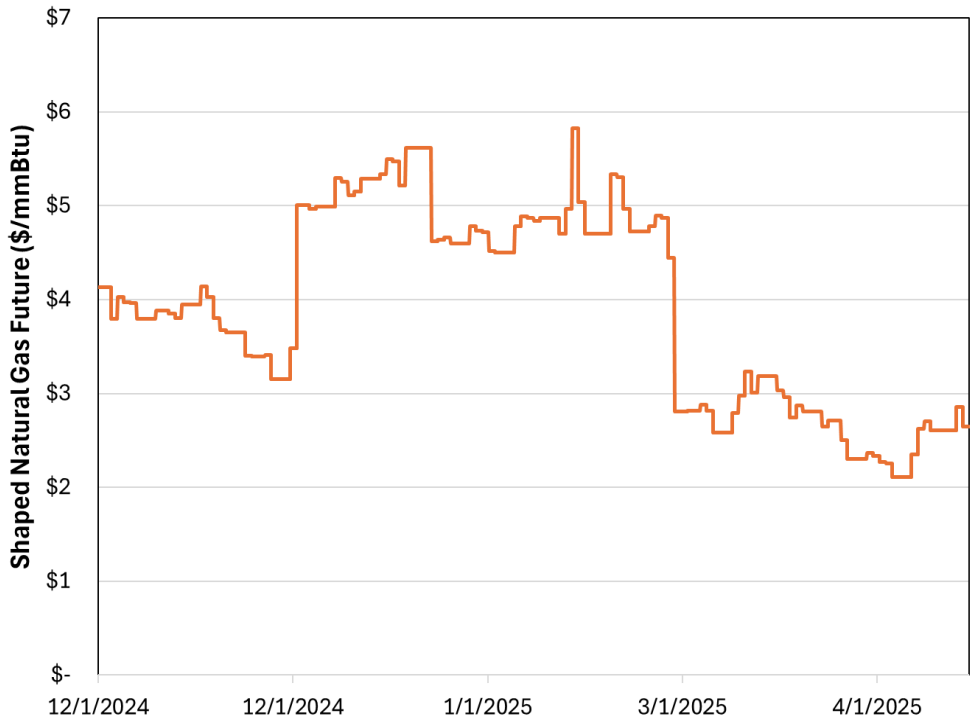


EXHIBIT 17

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

In Re:	§	Chapter 11
ZACHRY HOLDINGS, INC., et al.,[1]	§	Case No. 24-90377 (MI)
Debtor	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.	§	
Plaintiff,	§	
v.	§	Adversary No. 25-03025 (MI)
OMAHA PUBLIC POWER DISTRICT	§	
Defendant	§	

DECLARATION OF LYLE FOUTS

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

1. I make this declaration in support of the Reply in Support of Motion for Partial Summary Judgment on Liquidated Damages filed by Zachry Holdings, Inc. ("Zachry") in the above-named matter. I make the statements of fact in this declaration of my own personal knowledge, research, and analyses. If called as a witness in this proceeding, I could testify competently to the facts set forth herein.

2. My name is Lyle Fouts. I am the Project Manager for Zachry Industrial, Inc. at both the Turtle Creek Station and Standing Bear Lake Station sites. It has been my responsibility to plan for and oversee the construction and commissioning activities at each site, the project schedule and when Zachry will achieve Substantial Completion at each site. I have been Zachry's point person for communicating with OPPD on these topics, and the counterpart to Matt Eibes of OPPD.

[1] Zachry, https://zachrygroup.com/

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
Chapter 11, Case No. 24-90377 (MI), Adversary No. 25-03025 (MI)
Declaration of Lyle Fouts

3. Based on current projections and our estimate of remaining commissioning work that Zachry is responsible for completing, Zachry reasonably expects to send Guaranteed Substantial Completion Certificates for Turtle Creek Station to OPPD no later than May 30, 2025 and for Standing Bear Lake Station no later than June 4, 2025.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts and data stated herein are true and correct. Executed on May 28, 2025.



Lyle Fouts

EXHIBIT 18

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

In Re:	§	Chapter 11
ZACHRY HOLDINGS, INC., et al.,[1]	§	Case No. 24-90377 (MI)
Debtor	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.	§	
Plaintiff,	§	
v.	§	Adversary No. 25-03025 (MI)
OMAHA PUBLIC POWER DISTRICT	§	
Defendant	§	

FIRST SUPPLEMENTAL DECLARATION OF TANYA BODELL

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

1. I make this declaration in support of the Reply in Support of Motion for Partial Summary Judgment on Liquidated Damages filed by Zachry Holdings, Inc., ("Zachry") in the above-named matter. I make the expert opinions in this declaration of my own personal knowledge, research, and analyses. If called as a witness in this proceeding, I could testify competently to the opinions set forth herein.

2. I have reviewed the declaration of Kimberly Reome and the Expert Report of Kimberly Reome and Exhibits attached thereto (collectively the "Reome Report") and have the following observations related to her analyses and opinions.

    a. Damages can be calculated: The Reome Report provides no support for the argument that that "actual losses are difficult to ascertain with precision"[2] in

[1] Zachry, https://zachrygroup.com/

[2] Reome Report, para 1.2.1(c), p. 3.

this case, or that OPPD's Liquidated Damages as defined in the Second Amended EPC Contract are a reasonable approximation of the actual damages resulting from delay in achieving substantial completion. She readily calculated OPPD's damages caused by Zachry's delays. In fact, her stated experience in calculating damages, her own calculations, and reliance on OPPD's model results and documents, all indicate the damages in this case can be ascertained, even if she makes a number of errors and erroneous assumptions.

b. The Reome Report, when adjusted for the time frame in the Second Amended EPC Contract, with and without an adjustment to correct for errors, indicates that damages are well below the Liquidated Damages value of $64.3 million.

3. Interestingly, the Reome Report does not claim that actual damages are difficult or impossible to estimate, only to "ascertain with precision." Indeed, she claims to have "over 30 years of experience analyzing, quantifying, and developing damages analyses . . . calculating damages for matters relating to power plants, including calculation of replacement power and capacity costs during power plant shutdowns and derates." Damages associated with the failure to achieve substantial completion under the Second Amended EPC Contract effectively are a calculation of replacement power and capacity costs that OPPD incurred during the operational delay and can be reasonably estimated using standard industry approaches, including the methodologies that both she and I used.

4. The work reflected in the Reome Report confirms that OPPD has a market model to perform a calculation of lost net energy revenues:[3]

a. Backcasts: OPPD's market model apparently can be used to do a backcast in order to estimate actual damages associated with lost net energy revenues incurred with and without the two Facilities, as the Reome Report purports to do dating back to May 2023 based on historical values.

b. Forecasts: OPPD's market model also can do forecasts and projections of lost net energy revenues, as indicated by the Reome Report projection of damages from May through December 2025.[4]

[3] The Reome Report relies on OPPD's analysis and outputs from the Aurora Production Cost model produced by OPPD's energy market team with respect to the missed market energy net revenue. According to the Reome Report, "OPPD ran the model under the scenarios of Turtle Creek and Standing Bear operating, compared to not operating, the model outputs the difference in revenue and costs. The missed market energy revenue is netted against variable generation costs (e.g., fuel and variable operations and maintenance costs). The model inputs include, but are not limited to, 2023 and 2024 historical values for locational marginal price, SPP load, natural gas prices, and SPP wind generation" (Reome Report, para. 6.3.2., p. 18).

[4] Reome Report, Exhibits 4 and 4.1.

c. No Missed Market Energy Net Revenues: OPPD's own market model indicates that OPPD incurred zero damages associated with lost energy revenues for the period from December 2024 through May 2025.[5]

5. The Reome Report also confirms that OPPD maintains records and has the accounting ability to tally costs tied to firming, natural gas, electricity product purchases and sales, and other costs associated with power projects.[6] Unfortunately, she applies these records to perform an inaccurate calculation of damages based on an inappropriate application of damages theory, as detailed below. However, the Reome Report indicates that information was and is available to provide a reasonable estimate of damages actually incurred and that would be incurred going forward as of the date the Second Amended EPC Contract.[7]

6. This supports the conclusions in my Declaration that actual damages can be calculated retrospectively, as well as looking forward, using standard industry methodologies.[8] I addressed the fact that OPPD and the industry regularly do such calculations in my original expert report,[9] and this is confirmed by the calculations and reliance on OPPD's model results and documentation cited in the Reome Report, as well as by Ms. Reome's own stated qualifications related to 30 years of performing such damages calculations.

7. The Reoeme Report calculates damages according to five categories:

(1) Capacity Purchases [Section 6.2; Exhibit 3];

(2) Missed Market Energy Net Revenue [Section 6.3; Exhibits 4 and 4.1];

(3) Natural Gas Damages (Firm Transport Station and Services Costs) [Section 6.4; Exhibits 5 and 5.1];

(4) Lost Retail Capacity Revenue [Section 6.5; Exhibit 6] and

(5) Extended Project Costs [Section 6.6; Exhibit 7]

[5] See Reome Report, Exhibits 4 and 4.1.

[6] See Reome Report, Appendix C and Exhibits 3, 5, 5.1, 6, and 7, which rely on a compilation of values apparently based on OPPD's documents, contracts, trades, and other records.

[7] Specifically, OPPD provided Ms. Reome with Capacity Purchase Contracts - TCS and SBL Delay May 2023-Dec 2025(OPPD-EXPERT-01118).xlsx.

[8] Bodell Report, para. 21, pp. 6-7; para. 76, p. 28.

[9] Bodell Report, para. 14, footnote 7, p. 4.

8. The Reome Report claims that my calculation of actual damages is incomplete, yet the Reome Report includes the same basic categories of damages that I assessed in the Declaration: lost energy net revenues and capacity purchases.[10]

    a. Lost energy net revenues: The Reome Report refers to these as "missed energy market net revenues" which is similar to my category for "energy;" and

    b. Capacity Purchases: The Reome Report labels a category "capacity purchases" which is described in a manner similar to my category labeled "capacity".

9. I disagree with the Reome Report calculation of damages for these categories and, for the reasons described in the following paragraph, the other categories are invalid measures of damages and have serious economic errors for reasons described below.

    a. Missed Market Energy Net Revenues is a calculation by OPPD using its production cost model to measure its production costs with and without the Facilities.[11] Such models, although used regularly in the industry for various purposes, including calculating potential replacement power costs, are notorious for underestimating market price volatility and therefore the lost energy value of peaker plants such as Turtle Creek Station and Standing Bear Lake Station. This would explain why OPPD calculates zero damages for missed market energy net revenues for December 2024 through May 2025 in contrast to my spreadsheet model that works off of the actual volatility in prices that occurred.

    b. Capacity Purchases appears to be calculated using actual trades and transactions that OPPD entered into to purchase capacity. Without access to the underlying documents and data, I cannot opine on the methodology, calculations or relevance to the delay in the substantial completion date. However, the capacity prices appear to be based on a collection of contracts that may have been entered well before the Seconded Amended EPC Contract was entered into, extend for a term well before and after the damages period for the Second Amended EPC Contract, and therefore would not reflect the cost of short-term capacity purchases that OPPD would enter into to meet its reliability requirements due to the delay in substantial completion. The neighboring market interconnected to OPPD had very low capacity market prices of $0.75/kW-month for the winter of 2024/25 and the market participants can buy and sell capacity across regions

[10] See Reome Report, Section 6.3, Exhibits 4 and 4.1 for missed market energy net revenues; and Section 6.2 and Exhibit 3 for capacity purchases. She does not calculate damages associated with ancillary services (Reome Report, Section 6.3.5, p. 19).

[11] Reome Report, Section 6.3.

making the pricing used in the Reome Report suspect.[12] I therefore reserve my opinion on the validity of the quantities and prices that compose the capacity purchases category.

10. The Reome Report erroneously includes other categories:

a. Natural Gas Damages (i.e., Firm Fuel Transportation and Services):[13] The Reome Report fails to consider the fact that the Actual World expenditures and sales to procure fuel transportation and services without the Facilities also would have occurred in the Actual World had the Facilities been operational, resulting in no net damages to OPPD.[14]

b. Lost Retail Capacity Revenue: The Reome Report claims that there were large customers in OPPD's queue for interconnection that would have paid very high prices for capacity from OPPD.[15] Exhibit 6 of the Reome Report calculates the lost retail capacity revenue that allegedly could have been sold to one specific customer under its contract had the Facilities been operation. There are multiple issues with this claim.

i. First, it is unclear that the assumed price truly reflects wholesale market capacity that the Facilities would deliver versus another product tied to a retail demand charge rate.

ii. Second, the assumed prices for the demand charges are more than four times the price that the Reome Report assumes for its Capacity Purchases category, implying that such a lucrative spread would support OPPD purchasing additional capacity from the market to replace the lost capacity from the Facilities to meet that incremental demand and mitigate damages.

[12] Bodell Report, Figure E-4, p. 85.

[13] The Reome Report refers to this category of damages as "Natural Gas Damages" in Section 6.4, further defined as "Firm Natural Gas Station Transport" for Turtle Creek Station (Exhibit 5) and "Natural Gas and Propane Service Costs" (Exhibit 5.1) for Standing Bear Lake Station.

[14] As such costs are fixed costs unrelated to the production cost of energy included in Exhibits 4 and 4.1., I would not expect the Aurora model to net off such costs. Indeed, the Reome Report calculates total production costs for both Turtle Creek Station and Standing Bear Lake Station in 2025 as only $7.2 million (Exhibits 4 and 4.1) versus $11.7 million in firm delivery costs and services (Exhibits 5 and 5.1) for the same period, indicating that the fixed fuel transport and services costs are separate and apart from actual dispatch of the Facilities.

[15] Reome Report, Section 6.5, "Lost Retail Capacity Revenue."

iii. Third, the prices for the demand charges are almost three times the cost to build a new power plant for capacity,[16] implying that any large customer would minimize that capacity charge and either build their data center elsewhere or build their own plant to meet their needs.[17] It is ludicrous to think that a large customer would pay that price instead of simply moving to a lower cost area or building their own power plant. This may be the real reason the large customer did not connect to OPPD's system or maximize their capacity service.

iv. Lastly, there is no support for the claim that the large customer would ever consume the maximum contractual capacity at the site if the substantial completion of the Facilities had not been delayed.

All of these reasons render this entire category to be speculative and inconsistent with the other damages calculations in the Reome Report.[18]

c. Extended Project Costs: I have not received the documents to perform a forensics accounting exercise of the "Project Costs OPPD Incurred From Missed Guaranteed Substantial Completion Dates" reported in Exhibit 7 of the Reome Report. However, I note that the largest line items representing vast majority of the costs are OFE (Technical Field Assistant "TFA") for Wartsila and Siemens ($9.3 million) and Payroll ($3.9 million), for which there is no evidence that they are due to the delay in substantial completion. Some of the other costs also seem like they could have occurred even if the Facilities had achieved substantial completion.[19] The other items described as "repair costs for damaged items" do not appear to be due to delay or prolongation costs, but rather seem to be contractual cost allocation disputes by OPPD for alleged Zachry work deficiencies or physical damage to the facility before and after the Guaranteed Substantial Completion Date,[20] and therefore would not be included

[16] Bodell Report, para. 73, p. 17; para 79, p. 29.

[17] As posted by SPP in its Cost of New Entry calculation to be $85.61/kW-year (SPP Open Access Transmission Tariff, Section 13.0 and 14.2, https://sppviewer.etariff.biz/tariff), which equates to $7.13/kW-month.

[18] There is potentially a double-counting occurring as well. If OPPD has to procure 427 MW per month in the winter of 2024/25 in the absence of the Facilities to meet its reliability obligations, it is unclear how adding 600 MW of capacity at the Facilities in lieu of the purchases could release 450 per month of capacity to a retail purchaser. I also understand that there is a legal argument that this damages category would be considered consequential damages and precluded by the Second Amended EPC Contract.

[19] For example, fuel oil issues seem unrelated to substantial completion date, and damaged/missing parts reflect a potential fail to mitigate damages.

[20] Eibes Declaration at 20(b) ("SBLS damage claims due to a sabotage incident"); Reome Report Ex. 7 ("Fuel Oil Related Unit 2 Zachry Fuel Oil Human Performance Error Damaged / Missing Parts" and "Dec. 16, 2024 EMI Incident Damaged Cards, Raccoon Damaged / Missing Parts Engine 8 Sabotage"; *see also* First Amended Complaint, at para.

> in a comparison to the Liquidated Damages provision for delay. In addition, OPPD's estimate is "assumed to be incurred after December 2024" and continues through "December 2025," i.e., for twelve months rather than five months in the real world.[21]

I therefore conclude that the Reome Report grossly overstates damages.

11. Each category of damages in the Reome Report also is calculated for periods that start before the Guaranteed Substantial Completion guaranteed commercial operation date defined in the Liquidated Damages provisions in the Second Amended EPC Contract and extend into the future through December 2025. For example, Section 6 of the Reome Report purports to calculate damages for the time period of May 2023 through 2025, with monthly detail provided in the attached exhibits to the Reome Report. However, there is no explicit allocation of those damages to the Liquidated Damages period defined in the Second Amended EPC Contract, being the time period between the Guaranteed Substantial Completion Dates set forth in paragraph 8 of the amendment [December 16 and 31, 2024; the date the maximum amount of Liquidated Damages accrue [February 15, 2025] and Substantial Completion (hereinafter "Liquidated Damages Period").

12. To compare damages in the Reome Report to my own calculations, I have performed a rough comparison of the damages under the Reome Report categories for December 2025 through May 2025 using the monthly details contained in exhibits to the Reome Report. The following table calculates damages using Reome's values for the December 2024 through May 2025 time period (which extends beyond my damages calculation period of December 17, 2024 to April 15, 2025). The first column reflects Reome's calculated damages for the time period. The second column reflects Reome's calculated damages adjusted for Double Counting, as more fully explained below.[22] The final column shows the calculated damages in my Declaration.

72-102 (describing facts underlying these claims).

[21] Reome Report, Exhibit 7.

[22] Eliminating the categories that cannot be substantiated as economic damages or damages caused by the delayed substantial completion date, and assuming the Reome Report calculation of missed energy market net revenue estimates and purchased capacity costs are valid, which I do not concede to be the case, collapses damages down to nothing more than the calculation of purchased capacity in the Liquidated Damages period defined in the Second Amended EPC Contract.

Figure 1: Comparison of Damages in Bodell Report to Reome Report (Corrected)

Month Year	Exhibits 3 - 6 Reome Report	Exhibits 3 - 6 Reome Report Corrected	Energy, AS, Capacity Bodell Report (December 17, 2024 - April 15, 2025)
December 2024	$ 7,256,867	$ 1,962,230	$ 651,213
January 2025	$ 7,398,239	$ 1,962,230	$ 1,709,470
February 2025	$ 7,173,666	$ 1,962,230	$ 1,447,137
March 2025	$ 7,059,684	$ 1,962,230	$ 3,143,046
April 2025	$ 4,737,759	$ 1,010,980	$ 1,715,034
May 2025	$ 1,519,559	$ 1,010,980	
TOTAL	**$ 35,145,774**	**$ 9,870,880**	**$ 8,665,901**

The stipulated damages of $64.3 million is 6.5 times, or at least $54.4 million, higher than the Reome Report Corrected damages value. Even accepting all of the damages categories and calculations as valid (with the exception of the undated Extended Project Costs), Liquidated Damages are nearly double the total damages in the Reome Report for the damages period starting at the Second Amended EPC Contract dates.

13. The results of this comparison demonstrate that the actual damages for the Liquidated Damages Period estimated in my Declaration are not materially different than what Reome would have calculated for the same time period if OPPD's actual damages had been properly allocated to the Liquidated Damages Period and do not include erroneous double counting or failure to mitigate.

For example, the missed energy market net revenue estimates cover May 2023 through the end of 2025. However, supporting Reome Report Exhibits 4 and 4.1 show that there are no damages associated with lost energy during the Liquidated Damages Period, which supports my conclusion that electrical demand within OPPD's service area is seasonal and peak demand occurs primarily during summer months. With zero energy damages using OPPD's production cost model, Reome must calculate damages associated with capacity (which she fails to offset with capacity sales to retail customers) and natural gas delivery contracts (which would be the same in both worlds, and therefore equal to zero). Correcting for these errors brings the Reome Report damages to a value close to my calculation for the period of December 16, 2024 through April 15, 2025.

Similarly, the extended project costs of $18 million are for the entirety of January 2025 through December 2025, and not the Liquidated Damages Period, and appear to include separate amounts for damages that have nothing to do with delay or prolongation of the project or would have been incurred in the But-for World (see Reome Report Exhibit 7).

14. The corrections to the Reome Report calculations for December 2024 through May 2025 adjust to remove double counting, failure to mitigate, and the extended project costs. The basis for each of these adjustments is described below.

a. **Natural Gas Damages:** In section 6.4, the Reome Report describes the basis for natural gas damages:

- **Turtle Creek Station:** "I understand that in November 2024, OPPD contracted with NNG to reserve firm natural gas transport for Turtle Creek. It was therefore reasonable for OPPD to lock in natural gas supply shortly before the Guaranteed Substantial Completion Date.[FN74] OPPD has incurred the cost of having firm natural gas transport for Turtle Creek even though it is not operating.[FN 75]"

- **Standing Bear Lake Station:** "In October 2021, OPPD entered into an agreement with Metropolitan Utilities District of Omaha, Nebraska ("MUD") to supply natural gas and/or propane to Standing Bear.[FN 77] For each month, whether gas is supplied or not, OPPD is charged a demand charge from October through April of each year.[FN 78] OPPD also pays MUD a monthly service fee.[FN 79] Per the agreement with MUD, OPPD also pays an annual storage charge in November of each year.[FN 80]"

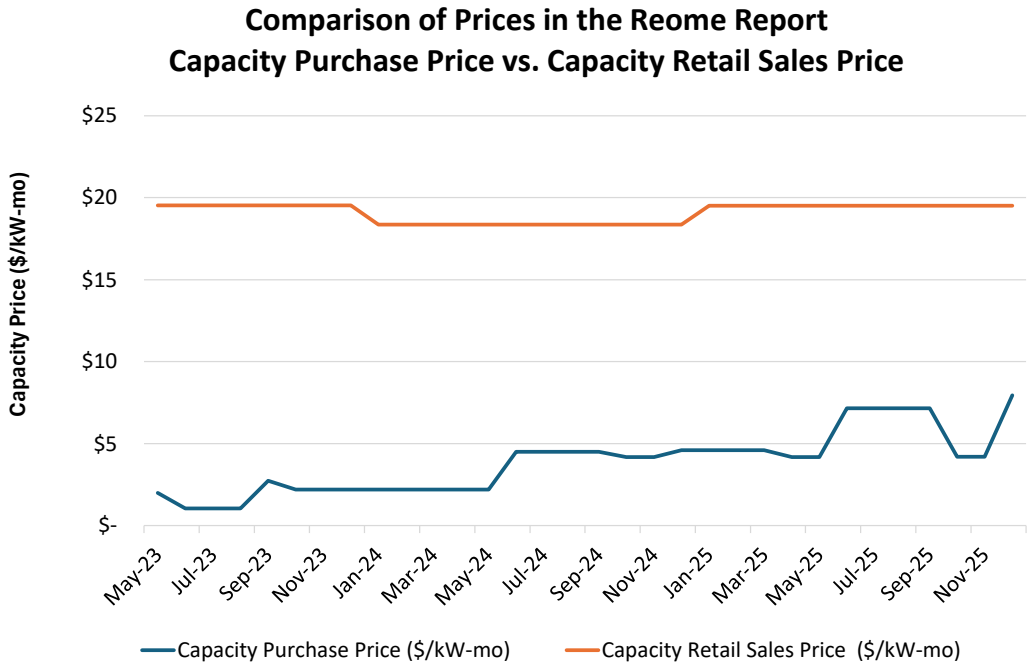
According to the Reome Report, these Natural Gas Firm purchase and transportation costs were incurred despite the delay in substantial completion. These contracts, therefore, also would have been incurred if the plants were operating by the guaranteed date of substantial completion. Therefore, there are no damages associated with these contracts as they would have occurred in the But-for World and actually did occur in the Actual World. Additionally, the Reome Report does not include or reference mitigation tied to reselling the gas storage and firm transportation, which are readily sellable assets traded on a daily basis in the marketplace.

b. **Lost Retail Capacity Revenue:** In Section 6.5, the Reome Report references $107.2 million in costs for the lost sales of capacity to retail customers for the entirety of May 2023 to December 2025, of which $14.5 million is for 2025. This claim is unsupportable on its face. According to the OPPD 2024 Annual Report, as of December 31, 2024, OPPD "Power sales commitments that extend through 2027 were $4.6 million as of December 31, 2024,"[23] well below the estimated incremental damages value for lost retail capacity revenue for 2025 alone. It is difficult to believe that the Facilities would have tripled the power sales commitments for OPPD. Furthermore, there is clearly a failure to mitigate. If retail

[23] OPPD, 2024 Annual Report, p. 77, https://www.oppd.com/media/320606/entire-2024-annual-report.pdf

customers are willing to pay for demand charges (presumably tied to the capacity of the connection, but unclear based on the Reome Report), OPPD could have resold the excess capacity that it had purchased at the lower rates in Exhibit 3 at a significant profit at the rates listed in Exhibit 6 (Figure 2)..

Figure 2: Comparison of Reome Report Capacity Purchase Price to Capacity Sales Price



15. One explanation of this discrepancy is that the Reome Report includes capacity prices that are not or were not available to OPPD. Alternatively, the demand charge for retail customers is not an equivalent product to the purchased capacity. OPPD cannot both have to buy capacity to cover the facilities, but then claim that it is unable to sell the capacity from the facilities to retail customers.

16. **Figure 3** compares the actual damages calculations in the Reome Report, as presented and corrected, to the actual and forecasted damages in the Bodell report for the period December 2024 through May 2025 by damages category. The corrected Reome Report damages are adjusted to remove failure to consider natural gas costs if the Facilities were operational, failure to mitigate, and removes the Extended Project Costs as being unrelated to the delay. In effect, the Reome Report's damages claims collapse down to the calculation of purchased capacity costs.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
Chapter 11, Case No. 24-90377 (MI), Adversary No. 25-03025 (MI)
First Supplemental Declaration of Tanya Bodell

Figure 3: Comparison of Alternative Damages Calculations by Category

	December 2024 - May 2025			December 17, 2024 - April 15, 2025	
	Exhibits 3 - 6	Exhibits 3 - 6		Bodell Report	
Month Year	Reome Report as Reported	Reome Report Adjusted	Notes	Actual as of April 15, 2025	Forecasted as of August 1, 2024
Energy Net Revenues	$ -	$ -	[1]	$ 7,577,085	$ 14,079,680
Ancillary Services	$ -	$ -	[2]	$ 115,931	$ 124,232
Capacity Purchases	$ 9,870,880	$ 9,870,880	[3]	$ 972,885	$ 972,885
Lost Retail Capacity Revenue	$ 18,289,281	$ -	[4]	$ -	$ -
Natural Gas Firm Transport and Services	$ 6,985,613	$ -	[5]	$ -	$ -
Extended Project Costs	$ 18,096,238	$ -	[6]	N/A	N/A
TOTAL	**$ 53,242,012**	**$ 9,870,880**		**$ 8,665,901**	**$ 15,176,797**

[1] Reome Report indicates minimal dispatch and zero net revenues for winter period.
[2] Reome Report does not calculate Ancillary Services.
[3] For this purpose, assumes Reome Report capacity purchases and prices are correct, even though the prices are suspect for winter demand.
[4] Unsupported by economics, market conditions, and speculative regarding what the large customer would have done if the Facilities were operatio
[5] Set to zero to reflect same charges in But-for World if the Facilities had achieved substantial completion.
[6] Set to zero as extended project costs are not shown to be related to the delay in substantial completion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts and data stated herein are true and correct. Executed on May 28, 2025.



Tanya Bodell