

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

	)	
In re	)	Chapter 11
	)	
Bosque Power Company, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 10-60348
	)	
Debtors.	)	Joint Administration Requested
	)	

**APPLICATION OF DEBTORS FOR AN ORDER APPROVING AGREEMENT  
WITH KURTZMAN CARSON CONSULTANTS LLC AND APPOINTING  
KURTZMAN CARSON CONSULTANTS LLC AS NOTICE AND CLAIMS AGENT**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby apply to this Court, pursuant to this application (the “Application”), for the entry of an order substantially in the form submitted herewith, pursuant to section 156(c) of title 28 of the United States Code, section 503(b) of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the “Bankruptcy Code”) and rule 2002 of the of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the Debtors’ services agreement with Kurtzman Carson Consultants LLC (“KCC”) and appointing KCC as notice and claims agent (the “Notice and Claims Agent”) in connection with these chapter 11 cases. The facts and circumstances supporting this Application are set forth in the Declaration of Brian R. McCabe, President of Debtors BosPower Development LLC (“BPD”), BosPower Development Blocker I Inc. (“BDBI”), BosPower Development Blocker II Inc. (“BDBII”) and BosPower Partners LLC (“Partners”) and an Authorized Representative of Debtors Bosque Power Company, LLC

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BosPower Development LLC (3544); BosPower Partners LLC (6652); Bosque Power Company, LLC (8730); BosPower Development Blocker I Inc. (1043); BosPower Development Blocker II Inc. (1097); Fulcrum Marketing and Trade LLC (8911).



(“BPC”) and Fulcrum Marketing and Trade LLC (“FMT”) (the “McCabe Declaration”), filed concurrently herewith. In further support of this Application, the Debtors respectfully represent as follows:

**Summary of Relief Requested**

By this Application, the Debtors seek an order approving and authorizing the Debtors’ employment of KCC as the notice and claims agent in these Chapter 11 Cases. Due to the large number of potential creditors and parties in interest involved in these cases, retaining KCC to provide these services is the most effective and efficient manner of providing notice in these Chapter 11 Cases.

**Jurisdiction**

1. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
3. Venue of these chapter 11 cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.
4. The statutory and rule-based predicates for the relief sought herein are section 156(c) of title 28 of the United States Code, section 503(b) of the Bankruptcy Code and rule 2002 of the Bankruptcy Rules.

**Background**

5. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court a petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing these cases (the “Chapter 11 Cases”). The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases

and, as of the date of the filing of this Application, no official committees have been appointed or designated. Concurrently with the filing of this Application, the Debtors have sought procedural consolidation and joint administration of these Chapter 11 Cases.

6. The factual background relating to the Debtors' commencement of these Chapter 11 Cases is set forth in detail in the McCabe Declaration incorporated herein by reference.

**Relief Requested**

7. By this Application, the Debtors seek to employ and retain KCC as Notice and Claims Agent pursuant to 28 U.S.C. § 156(c)<sup>2</sup> as more fully described below.

8. The Debtors have determined to seek authority from this Court to employ KCC to perform notice and claims services for the Debtors in these Chapter 11 Cases upon the terms and conditions contained in that certain KCC Agreement for Services, dated as of March 23, 2010, by and between KCC and the Debtors (together with all amendments, modifications, renewals thereof and all documents ancillary thereto or otherwise entered into in connection therewith, the "Services Agreement"), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference.

9. As set forth in the affidavit of James Le, Chief Operating Officer of KCC (the "Le Affidavit"), which is attached hereto as **Exhibit B**, the Debtors have numerous potential creditors. In addition to these creditors, there are many other parties in interest in the Debtors' Chapter 11 Cases. Although the office of the Clerk of the United States Bankruptcy Court for the Western District of Texas (the "Clerk's Office") ordinarily would serve notices on the

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<sup>2</sup> Section 156(c) of title 28 of the United States Code provides in relevant part that "[a]ny court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States."

Debtors' creditors and other parties in interest and administer claims against the Debtors, the Clerk's Office may not have the resources to undertake such tasks, especially in light of the Debtors' creditor body and the tight timelines that frequently arise in chapter 11 cases.

10. Because the Debtors agree that retaining KCC as Notice and Claims Agent is in the best interests of the Debtors and their estates, the Debtors propose to engage KCC to act as the Debtors' Notice and Claims Agent. This retention is the most effective and efficient manner of providing notice to the Debtors' creditors and other parties in interest of the commencement of these Chapter 11 Cases and other developments in these Chapter 11 Cases. In that capacity, KCC will transmit, receive, docket and maintain proofs of claims filed in connection with these Chapter 11 Cases.

***Qualifications of KCC***

11. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services, including noticing, claims processing, solicitation, ballot tabulation and other related services critical to the effective administration of chapter 11 cases. Indeed, KCC has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing, claims processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will work with the Clerk's Office to ensure that such methodology conforms with all of the Court's procedures and the provisions of any orders entered by this Court.

12. KCC has substantial experience in matters of this size and complexity and has acted as the official notice, claims and solicitation agent in many large bankruptcy cases in this District and other districts nationwide. *See, e.g., In re Penton Bus. Media Holdings, Inc.*, Case No. 10-10689 (Bankr. S.D.N.Y. Feb. 10, 2010); *In re Uno Rest. Holdings Corp.*, Case No. 10-

10209 (Bankr. S.D.N.Y. Jan. 20, 2010); *In re EnviroSolutions of New York, LLC, et al.*, Case No. 10-11236 (Bankr. S.D.N.Y. Mar. 10, 2010); *In re Int'l Aluminum Corp.*, Case No. 10-10003 (Bankr. D. Del. Jan. 4, 2010); *In re Eddie Bauer Holdings, Inc.*, Case No. 09-12099 (Bankr. D. Del. Jun. 18, 2009); *In re Premier Int'l Holdings Inc.*, Case No. 09-12019 (Bankr. D. Del. Jun. 15, 2009); *In re Visteon*, Case No. 09-11786 (Bankr. D. Del. May 29, 2009); *In re Black Gaming, LLC*, Case No. 10-13301 (Bankr. D. Nev. 2010); *In re Movie Gallery, Inc., et al.*, Case No. 10-30696 (Bankr. E.D. Va. 2010); *In re Fleetwood Enters., Inc.*, Case No. 09-14254 (Bankr. C.D. Cal. 2009).<sup>3</sup>

***The Debtors' Agreement with KCC***

13. Pursuant to the Services Agreement, KCC will perform various noticing, claims management and reconciliation, plan solicitation, balloting, disbursement and other services (collectively, the “Services”), if necessary, at the request of the Debtors or the Clerk’s Office. Such Services may include, for instance:

- (a) assisting with creditor matrix compilation, relevant notice party list creation and preparation of required schedules and statements of financial affairs;
- (b) creating and distributing personalized claim forms to creditors and other interested parties and providing access to the public for examination of copies of the proofs of claim or proofs of interest filed in the case and the claims register at no charge during regular business hours;
- (c) receiving, examining and maintaining all proofs of claim filed with the Court, providing secure storage for all original proofs of claim;
- (d) maintaining official claims registers in the Chapter 11 Cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:

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<sup>3</sup> Because of the voluminous nature of the orders cited herein, they are not attached to the Application. Copies of these orders, however, are available on request of the Debtors’ proposed counsel.

- i. the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - ii. the date the proof of claim or proof of interest was received by KCC and/or the Court;
  - iii. the claim number assigned to the proof of claim or proof of interest;
  - iv. the asserted amount and classification of the claim; and
  - v. the applicable Debtor against which the claim or interest is asserted;
- (e) facilitating the claims-reconciliation process by matching filed claims to scheduled liabilities, identifying duplicate and amended claims, locating wrong-debtor or multiple-debtor claims and generating necessary reports to be used as exhibits for claims objections;
- (f) recording claim transfers and providing required notice to affected parties pursuant to Bankruptcy Rule 3001(e);
- (g) implementing necessary security measures to ensure the completeness and integrity of the claims registers;
- (h) complying with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- (i) implementing virtual data room solutions to help expedite contract review, streamlining asset sales or facilitating legal proceedings in conjunction with the Debtors' restructuring;
- (j) preparing and serving required notices in the Chapter 11 Cases, including:
- i. notice of the commencement of the Chapter 11 Cases and the initial meeting of creditors under Bankruptcy Code section 341(a);
  - ii. a notice of the claims bar date;
  - iii. notices of objections to claims and objections to transfers of claims;

- iv. notices of hearings on motions filed by the Office of the United States Trustee for the Western District of Texas (the “U.S. Trustee”);
  - v. notices of transfers of claims;
  - vi. notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization; and
  - vii. such other miscellaneous notices as the Debtors or Court may deem necessary or appropriate for an orderly administration of the Chapter 11 Cases.
- (k) assisting with solicitation of votes and tabulation of ballots in connection with a plan of reorganization; and
  - (l) providing such other claims processing, noticing, balloting and administrative services as may be requested from time to time by the Debtors.

14. In addition to the foregoing, KCC will assist with, among other things: (a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors’ schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; and (d) performing other administrative tasks pertaining to the administration of the Chapter 11 Cases, as may be requested by the Debtors or the Clerk’s Office. KCC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States and as may be entered by the Court’s order.

***KCC’s Compensation and Disinterestedness***

15. The fees to be charged by KCC in connection with these Chapter 11 Cases are set forth in the Services Agreement. The Debtors propose that the cost of KCC’s services be paid from the Debtors’ estates as provided by 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A). The Debtors respectfully submit that KCC’s rates for its services in connection with the notice,

claims processing and solicitation services are competitive and comparable to the rates charged by their competitors for similar services.

16. As an administrative agent and adjunct to the Court, the Debtors do not believe that KCC is a “professional” whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code. Furthermore, the Debtors respectfully submit that the fees and expenses incurred by KCC are administrative in nature and, therefore, should not be subject to the standard fee application procedures for professionals. Specifically, the Debtors request authorization to compensate KCC in accordance with the terms and conditions set forth in the Services Agreement, upon KCC’s submission to the Debtors of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection with services provided by KCC to the Debtors or the Clerk’s Office. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the Debtors request that the fees and expenses of KCC under the Services Agreement be allowed as administrative expenses of the Debtors’ estates.

17. Notwithstanding the foregoing, the Debtors have nonetheless requested that KCC conduct a conflicts check to determine whether it meets the “disinterestedness” standard of section 327(a) of the Bankruptcy Code. The results of this conflicts check are set forth in the Le Affidavit attached hereto as **Exhibit B**.

18. In reliance on the Le Affidavit, the Debtors believe that KCC does not hold or represent an interest materially adverse to the Debtors’ estates. Further, in reliance on the Le Affidavit, the Debtors also believe that KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code because its members and employees:

- (a) are not creditors, equity security holders or insiders of the Debtors;



- (b) are not and were not, within two years before the date of filing of the Debtors' chapter 11 petitions, directors, officers or employees of the Debtors; and
  - (c) do not have interests materially adverse to the interest of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, or for any other reason.
19. As part of its retention, KCC agrees, among other things, that:
- (a) KCC will not consider itself employed by the United States government and will not seek any compensation from the United States government in its capacity as the Notice and Claims Agent in these Chapter 11 Cases;
  - (b) by accepting employment in these Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government;
  - (c) in its capacity as the Notice and Claims Agent in these Chapter 11 Cases, KCC will not be an agent of the United States government and will not act on behalf of the United States government; and
  - (d) KCC will not employ employees of the Debtors in connection with its work as the Notice and Claims Agent in these Chapter 11 Cases.

**Basis for Relief**

20. Bankruptcy Rule 2002 generally regulates what notices must be provided to creditors and other parties in interest in bankruptcy cases. Under Bankruptcy Rule 2002(f), the Court may direct that a person, other than the Clerk of the Court, give notice of the various matters described above.

21. In addition, section 156(c) of title 18 of the United States Code, which governs the staffing and expenses of the Court, expressly authorizes the Court to use facilities other than the Clerk's Office for administration of bankruptcy cases; as follows:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the

provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

22. For all of the foregoing reasons, the Debtors believe that the retention of KCC as the Notice and Claims agent in these Chapter 11 Cases is in the best interests of the Debtors, their estates and creditors.

**Notice**

23. Notice of this Application has been given to: (a) the United States Trustee; (b) the Prepetition Agent; (c) counsel for the Prepetition Agent; (d) the Debtors' thirty largest unsecured creditors as set forth in the consolidated list filed with the Debtors' petitions; and (e) all required governmental agencies. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

WHEREFORE, the Debtors respectfully request for the reasons set forth herein and in the McCabe Declaration that the Court enter an order in substantially the form submitted herewith: (a) granting the relief requested herein; and (b) granting such other and further relief as the Court deems just and proper.

*[Remainder of page intentionally left blank]*

Dated: March 24, 2010  
Houston, Texas

**BosPower Development LLC, BosPower Development Blocker I Inc., BosPower Development Blocker II Inc., BosPower Partners LLC, Bosque Power Company, LLC and Fulcrum Marketing and Trade LLC**

*/s/ Brian R. McCabe*

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Brian R. McCabe  
President of Debtors BosPower Development LLC, BosPower Development Blocker I Inc., BosPower Development Blocker II Inc. and BosPower Partners LLC and an Authorized Representative of Debtors Bosque Power Company, LLC and Fulcrum Marketing and Trade LLC



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 23rd day of March, 2010, between Bosque Power Company, LLC (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”).

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



## KCC AGREEMENT FOR SERVICES

information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services, expenses and supplies at the rates or prices set by KCC and in effect as of the date of this Agreement in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment. KCC reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, KCC will give thirty (30) days written notice to the Company.

B. The Company agrees to pay the reasonable out of pocket expenses incurred by KCC in connection with services provided under this Agreement, including but not limited to, transportation, lodging, and meals.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and expenses related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. However, where total fees and expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) ("Section 156(c)") and that all fees and expenses due under this Agreement shall be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause a motion to be filed with the Bankruptcy Court seeking entry of an order pursuant to Section 156(c) approving this



## **KCC AGREEMENT FOR SERVICES**

Agreement in its entirety (the “Section 156(c) Order”). The form and substance of the motion and the Section 156(c) Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with Section 156(c) and under the terms of this Agreement.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$20,000 (the “Retainer”) that may be held by KCC as security for the Company’s payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### **III. RIGHTS OF OWNERSHIP**

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term “program” shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC’s performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company’s use during and in connection with the services provided by KCC under this Agreement.

### **IV. NON-SOLICITATION**

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### **V. CONFIDENTIALITY**

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days’ written notice to the other party, release the required information.



## KCC AGREEMENT FOR SERVICES

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Section 156(c) Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility under Section 156(c) and this Agreement.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Section 156(c) Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request, KCC shall be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.





### KCC AGREEMENT FOR SERVICES

#### X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

#### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

#### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
2335 Alaska Ave.  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133

Company: *Bosque Power Company*  
Address: *210 PurEnergy Management Services LLC*  
*1732 West Genesee Street*  
City, ST Zip: *Syracuse New York 13204*  
Attn: *Steve Parker*  
Tel: *315-448-2266*  
Fax:

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

#### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

#### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired



**KCC AGREEMENT FOR SERVICES**

thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

**XV. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

**XVI. ARBITRATION**

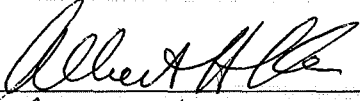
Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in Los Angeles County, State of California.

**XVII. ATTORNEYS' FEES**


In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

  
BY: ALBERT H. KASS DATE: 3/23/2010  
TITLE: VP Corporate Restructuring

Bosque Power Company, LLC

 3-23-10  
BY: LAYTON GRISSETTE DATE: \_\_\_\_\_  
TITLE: AUTHORIZED REPRESENTATIVE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

In re	)	Chapter 11
	)	
Bosque Power Company, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 10-60348
	)	
Debtors.	)	Joint Administration Requested
	)	

**AFFIDAVIT OF JAMES LE IN SUPPORT OF APPLICATION  
OF DEBTORS FOR AN ORDER APPROVING AGREEMENT  
WITH KURTZMAN CARSON CONSULTANTS LLC AND APPOINTING  
KURTZMAN CARSON CONSULTANTS LLC AS NOTICE AND CLAIMS AGENT**

STATE OF CALIFORNIA	)
	)
COUNTY OF LOS ANGELES	)

**James Le**, being duly sworn, deposes and says:

1. I am the Chief Operating Officer of Kurtzman Carson Consultants LLC (“KCC”), chapter 11 administrative claims consultants, notice agents and analysts, whose offices are located at 2335 Alaska Avenue, El Segundo, California 90245. I submit this affidavit in support of the application (the “Application”) of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order authorizing the retention and employment of KCC as notice and claims agent for the Debtors. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services, including noticing, claims processing, solicitation, ballot

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BosPower Development LLC (3544); BosPower Partners LLC (6652); Bosque Power Company, LLC (8730); BosPower Development Blocker I Inc. (1043); BosPower Development Blocker II Inc. (1097); Fulcrum Marketing and Trade LLC (8911).

tabulation and other related services critical to the effective administration of chapter 11 cases. Indeed, KCC has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing, claims processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will work with the Clerk's Office to ensure that such methodology conforms with all of the Court's procedures, the Local Rules and the provisions of any orders entered by this Court.

3. KCC has substantial experience in matters of this size and complexity and has acted as the official notice, claims and solicitation agent in many large bankruptcy cases in this District and other districts nationwide. *See, e.g., In re Penton Bus. Media Holdings, Inc.*, Case No. 10-10689 (Bankr. S.D.N.Y. Feb. 10, 2010); *In re Uno Rest. Holdings Corp.*, Case No. 10-10209 (Bankr. S.D.N.Y. Jan. 20, 2010); *In re EnviroSolutions of New York, LLC, et al.*, Case No. 10-11236 (Bankr. S.D.N.Y. Mar. 10, 2010); *In re Int'l Aluminum Corp.*, Case No. 10-10003 (Bankr. D. Del. Jan. 4, 2010); *In re Eddie Bauer Holdings, Inc.*, Case No. 09-12099 (Bankr. D. Del. Jun. 18, 2009); *In re Premier Int'l Holdings Inc.*, Case No. 09-12019 (Bankr. D. Del. Jun. 15, 2009); *In re Visteon*, Case No. 09-11786 (Bankr. D. Del. May 29, 2009); *In re Black Gaming, LLC*, Case No. 10-13301 (Bankr. D. Nev. 2010); *In re Movie Gallery, Inc., et al.*, Case No. 10-30696 (Bankr. E.D. Va. 2010); *In re Fleetwood Enters., Inc.*, Case No. 09-14254 (Bankr. C.D. Cal. 2009).

4. KCC is well qualified to serve as the Debtors' claims, noticing and balloting agent in connection with these chapter 11 cases. KCC is fully equipped to handle the volume involved in properly sending the required notices to creditors and other interested parties and administering claims in these chapter 11 cases. KCC will comply with all requests of the Clerk

of the Court and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

5. Pursuant to the Agreement of Services dated March 23, 2010, a copy of which is attached to the Application as an exhibit (the “Services Agreement”), KCC will perform the following noticing, claims management and reconciliation, plan solicitation, balloting and disbursement services, if necessary, at the request of the Debtors or the Clerk’s Office:

- (a) assisting with creditor matrix compilation, relevant notice party list creation and preparation of required schedules and statements of financial affairs;
- (b) creating and distributing personalized claim forms to creditors and other interested parties and providing access to the public for examination of copies of the proofs of claim or proofs of interest filed in the case and the claims register at no charge during regular business hours;
- (c) receiving, examining and maintaining all proofs of claim filed with the Court, providing secure storage for all original proofs of claim;
- (d) maintaining official claims registers in the chapter 11 cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:
  - i. the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - ii. the date the proof of claim or proof of interest was received by KCC and/or the Court;
  - iii. the claim number assigned to the proof of claim or proof of interest;
  - iv. the asserted amount and classification of the claim; and
  - v. the applicable Debtor against which the claim or interest is asserted;
- (e) facilitating the claims-reconciliation process by matching filed claims to scheduled liabilities, identifying duplicate and amended

claims, locating wrong-debtor or multiple-debtor claims and generating necessary reports to be used as exhibits for claims objections;

- (f) recording claim transfers and providing required notice to affected parties pursuant to Bankruptcy Rule 3001(e);
- (g) implementing necessary security measures to ensure the completeness and integrity of the claims registers;
- (h) complying with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- (i) implementing virtual data room solutions to help expedite contract review, streamlining asset sales or facilitating legal proceedings in conjunction with the Debtors' restructuring;
- (j) preparing and serving required notices in the chapter 11 cases, including:
  - vii. notice of the commencement of the chapter 11 cases and the initial meeting of creditors under Bankruptcy Code section 341(a);
  - viii. a notice of the claims bar date;
  - ix. notices of objections to claims and objections to transfers of claims;
  - x. notices of hearings on motions filed by the Office of the United States Trustee for the Western District of Texas (the "U.S. Trustee");
  - xi. notices of transfers of claims;
  - xii. notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization; and
  - vii. such other miscellaneous notices as the Debtors or Court may deem necessary or appropriate for an orderly administration of the chapter 11 cases.
- (k) assisting with solicitation of votes and tabulation of ballots in connection with a plan of reorganization; and

- (l) providing such other claims processing, noticing, balloting and administrative services as may be requested from time to time by the Debtors.

6. In addition to the foregoing, KCC will assist with, among other things: (a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; and (d) performing other administrative tasks pertaining to the administration of the chapter 11 cases, as may be requested by the Debtors or the Clerk's Office. KCC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States and as may be entered by the Court's order.

7. KCC has no agreement with any entity to share with such entity (other than employees, contractors and affiliates) any compensation received by KCC in connection with these chapter 11 cases. KCC will maintain reasonably detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services.

8. The Services Agreement sets forth the fees KCC charges for the services it will provide to the Debtors. The proposed compensation arrangement is consistent with, and typical of, arrangements of KCC and its competitor firms to provide claims and noticing agent services in chapter 11 cases.

9. KCC requests that the Debtors pay their fees and expenses in accordance with the terms of the Services Agreement. KCC will submit invoices summarizing, in reasonable detail, the services and expenses for which compensation is sought.

10. The amounts charged by KCC in connection with this appointment will not exceed the amounts set forth in the Services Agreement, except to the extent such amounts are subject to ordinary increase in accordance with KCC's established billing practices and

procedures. The Debtors have provided KCC with a security a retainer in the amount of \$20,000, which will be held by KCC during the chapter 11 cases solely for the payment of expenses incurred under the Services Agreement. These rates are at least as favorable as the prices KCC charges in other chapter 11 cases in which the firm has been retained to perform similar services.

11. Although the Debtors do not propose to retain KCC under section 327 of the Bankruptcy Code, KCC has nonetheless conducted a conflicts analysis and, to the best of its knowledge, KCC neither holds nor represents an interest materially adverse to the Debtors' estates nor has a material connection to the Debtors, their creditors or their related parties with respect to any matter for which KCC will be employed. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor. To the best of my knowledge, such relationships are materially unrelated to these chapter 11 cases. In addition, KCC personnel may have relationships with some of the Debtors' creditors or other parties in interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to these chapter 11 cases. KCC has and will continue to represent clients in matters materially unrelated to these chapter 11 cases. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases.

12. KCC is an indirect subsidiary of Computershare Limited. Computershare Limited is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As



such, any relationships that Computershare Limited and its affiliates maintain do not create an interest of KCC that would be materially adverse to the Debtors' estates or any class of creditors or equity security holders. Administar, a claims and noticing agent, is also an indirect subsidiary of Computershare Limited. On June 10, 2009, the marketing and operation of Administar's restructuring services were consolidated under KCC. Other than as disclosed herein, to the best of my knowledge and belief, insofar as I have been able to ascertain after research and inquiry, I believe that KCC does not hold or represent an interest materially adverse to the Debtors' estates. To the best of my knowledge and belief, insofar as I have been able to ascertain after research and inquiry, I believe that KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code in that its members and employees:

- (a) are not creditors, equity security holders or insiders of the Debtors;
- (b) are not and were not, within two years before the date of filing of the Debtors' chapter 11 petitions, directors, officers or employees of the Debtors; and
- (c) do not have interests materially adverse to the interest of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, or for any other reason.

13. On behalf of KCC, I represent that:

- (a) KCC will not consider itself employed by the United States government and will not seek any compensation from the United States government in its capacity as the Claims Agent in these chapter 11 cases;
- (b) by accepting employment in these chapter 11 cases, KCC waives any rights to receive compensation from the United States government;
- (c) in its capacity as the Claims Agent in these chapter 11 cases, KCC will not be an agent of the United States government and will not act on behalf of the United States government; and

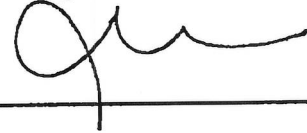
- (d) KCC will not employ any employees of the Debtors in connection with its work as the Claims Agent in these chapter 11 cases.

14. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental affidavit.

15. KCC will comply with all requests of the Clerk of the Court and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of section 156(c) of title 28 of the United States Code, 28 U.S.C. § 156(c).

*[Remainder of page intentionally left blank]*

I declare under the penalty of perjury under applicable law that the foregoing is true and correct and that this affidavit was executed on March 23, 2010, at El Segundo, California.



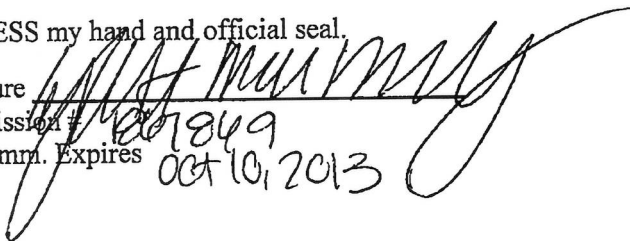
James Le  
Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, California 90245

State of California  
County of Los Angeles

Subscribed and sworn to before me on this 23rd day of March, 2010, by James Le, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official seal.

Signature  
Commission #  
My Comm. Expires



1867869  
Oct 10, 2013



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

In re )  
 ) Chapter 11  
Bosque Power Company, LLC, *et al.*,<sup>1</sup> )  
 ) Case No. 10-60348  
 )  
Debtors. ) Jointly Administered  
 )

**ORDER APPROVING AGREEMENT WITH KURTZMAN  
CARSON CONSULTANTS LLC AND APPOINTING KURTZMAN  
CARSON CONSULTANTS LLC AS NOTICE AND CLAIMS AGENT**

This matter coming before the Court on the Application of Debtors for an Order Approving Agreement with Kurtzman Carson Consultants LLC and Appointing Kurtzman Carson Consultants LLC as Notice and Claims Agent (the “Application”),<sup>2</sup> filed by the above-

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BosPower Development LLC (3544); BosPower Partners LLC (6652); Bosque Power Company, LLC (8730); BosPower Development Blocker I Inc. (1043); BosPower Development Blocker II Inc. (1097); Fulcrum Marketing and Trade LLC (8911).

<sup>2</sup> Each capitalized term used but not otherwise defined herein shall have the meaning ascribed thereto in the Application.

captioned debtors and debtors in possession (collectively, the “Debtors”); the Court having reviewed the Application, the Le Affidavit attached thereto and the McCabe Declaration and having considered the statements of counsel and the evidence adduced with respect to the Application at a hearing before the Court (the “Hearing”); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Application and the Hearing was sufficient under the circumstances; after due deliberation, the Court having determined that the relief requested in the Application is necessary and essential for the Debtors’ reorganization and such relief is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

**IT IS HEREBY ORDERED THAT:**

1. The Application is GRANTED in its entirety.
2. The Debtors are authorized to employ and retain KCC as their notice and claims agent in accordance with the terms and conditions set forth in the Application and the Services Agreement.
3. The terms of the Services Agreement are approved and the Debtors are authorized to engage KCC, effective as of the Petition Date, upon the terms and for the purposes set forth in the Application and the Services Agreement.
4. All objections to the Application or the relief requested therein that have not been made, withdrawn, waived or settled, and all reservations of rights included therein, are overruled and disallowed on the merits.

5. KCC is hereby appointed as the Notice and Claims Agent in these Chapter 11 Cases, pursuant to 28 U.S.C. § 156(c), on the terms and conditions set forth in the Application and the Services Agreement.

6. Without further order of the Court, the Debtors are authorized to compensate KCC in accordance with the terms and conditions of the Services Agreement, upon KCC's submission to the Debtors of invoices summarizing in reasonable detail the services and expenses for which compensation is sought. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC incurred pursuant to the Services Agreement shall be an administrative expense of the Debtors' estates.

7. KCC may hold its retainer under the Services Agreement during the Chapter 11 Cases as security for the payment of expenses only under the Services Agreement.

8. If these cases are converted to cases under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services until all claims in these cases have been processed; and if claims agent representation is necessary in the converted chapter 7 cases, KCC will continue to be paid in accordance with 28 U.S.C. § 156(c) upon the terms of the Services Agreement and hereof.

9. The Debtors and KCC are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

10. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

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