

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
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 EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. 19-11563 (KBO)  
 :  
 Debtors. : Jointly Administered  
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 : **Hearing Date: August 14, 2019 at 11:00 a.m. (ET)**  
 : **Obj. Deadline: August 7, 2019 at 4:00 p.m. (ET)**  
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**DEBTORS’ MOTION FOR AN ORDER  
AUTHORIZING THE EMPLOYMENT AND PAYMENT OF  
PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS**

The debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), under sections 105(a), 327, 328, 330 and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing, but not directing, the Debtors to retain professionals utilized in the ordinary course of business, in accordance with the procedures proposed herein. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: EmERGE Energy Services, LP (2937), EmERGE Energy Services GP LLC (4683), EmERGE Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and EmERGE Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



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1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 327, 328, 330 and 331.

### BACKGROUND

2. On July 15, 2019 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration Bryan M. Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 14] (the “**First Day Declaration**”)<sup>2</sup> filed with the Court on July 16, 2019, and is fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in these Chapter 11 Cases and no committees have yet been appointed.

4. The Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

### RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of the Proposed Order, substantially in the form of Exhibit A attached hereto, pursuant to sections 105(a), 327, 328, 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2014, authorizing, but not directing, the Debtors to (a) retain the OCPs (as defined below) without requiring the submission of separate retention

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<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

pleadings for each OCP and (b) pay the OCPs one-hundred percent (100%) of their postpetition fees and expenses, subject to the OCP Procedures (as defined below)

### **THE DEBTORS' OCPs**

6. The Debtors customarily retain the services of various attorneys and other professionals to represent them in matters arising in the ordinary course of their businesses, but unrelated to these Chapter 11 Cases (each, an "**OCP**" and, collectively, the "**OCPs**"). An initial list of the Debtors' current OCPs and their applicable OCP Caps (as defined below) is attached to the Proposed Order as Exhibit 1.<sup>3</sup>

7. The Debtors desire to continue to employ and retain the services of the OCPs while operating as debtors in possession under the Bankruptcy Code, which will enable them to continue the normal business activities that are essential to the achievement of their chapter 11 objectives. Moreover, the work of the OCPs, albeit ordinary course, is directly related to the preservation of the value of the Debtors and the Debtors' estates, even though the amount of fees and expenses incurred by the OCPs represents only a fraction of that value. Although the automatic stay and other issues in these cases may decrease the Debtors' need for the services of certain OCPs, the Debtors cannot now quantify or qualify their needs.

8. It would severely hinder the administration of the Debtors' estates if the Debtors were required to (a) submit to the Court an application, affidavit, and proposed retention order for each OCP, (b) wait until such order is approved before such OCP continues to render services, and (c) withhold payment of the normal fees and expenses of the OCPs until they comply with the compensation and reimbursement procedures applicable to the Debtors' chapter 11 professionals.

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<sup>3</sup> The Debtors reserve the right to supplement or otherwise amend this exhibit to include additional OCPs as they deem necessary and appropriate.

9. Under such conditions, there is a significant risk that some OCPs would be unwilling to provide services, and that others would suspend services pending a specific court order authorizing the services. Since many of the matters for which the OCPs provide services are active on a day-to-day basis, any delay or need to replace professionals could have significant adverse consequences. For example, if the expertise and background knowledge of the OCPs with respect to the particular matters for which they were responsible prior to the Petition Date were lost, the estates undoubtedly would incur additional and unnecessary expenses because the Debtors would be forced to retain other professionals without such background and expertise, at potentially higher rates. It is therefore in the best interest of the Debtors' estates to avoid any disruption to the professional services required in the day-to-day operation of the Debtors' businesses.

10. Moreover, requiring the OCPs to file retention pleadings and participate in the payment approval process along with the chapter 11 professionals would unnecessarily burden the office of the Clerk of the Court, the Court, and the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), while adding significantly to the administrative costs of these cases without any corresponding benefit to the Debtors' estates.

11. To the best of the Debtors' knowledge, none of the OCPs represents or holds any interest materially adverse to the Debtors or to their estates with respect to the matter in which such OCP is to be employed. Although certain of the OCPs may hold unsecured claims against the Debtors, the Debtors do not believe that any of such claims constitute interests materially adverse to the Debtors, their estates, their creditors, or other parties in interest. By this Motion, the Debtors are neither requesting authorization to pay prepetition amounts owed to any of the OCPs nor requiring the OCPs to waive any claim against the Debtors.

## PROPOSED OCP PROCEDURES

12. The Debtors anticipate employing the OCPs to perform ongoing services during the pendency of these Chapter 11 Cases. Except as may be set forth in the OCP Procedures (as defined below), during the pendency of these Chapter 11 Cases, no single OCP will be paid more than: (i) \$15,000 per month, on average over any three-month period on a rolling basis (the “**Tier 1 OCP Cap**”) or (ii) \$50,000 per month, on average over any three-month period on a rolling basis during these Chapter 11 Cases for postpetition compensation for services rendered to the Debtors (the “**Tier 2 OCP Cap**” and together with the Tier 1 OCP Cap, the “**OCP Caps**”),<sup>4</sup> as set forth in Exhibit 1 to the Proposed Order.

13. The Debtors propose that the following procedures shall govern the retention and payment of the OCPs (the “**OCP Procedures**”):

- (a) Each OCP shall complete a declaration, substantially in the form attached to the Proposed Order as Exhibit 2 (each, a “**Declaration of Disinterestedness**”), and provide such declaration to counsel for the Debtors. Upon receipt of such Declaration of Disinterestedness, counsel for the Debtors shall file the same with the Court and have it served on the following parties: (i) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); (ii) counsel to any statutory committee appointed in these Chapter 11 Cases, if any, and (iii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (collectively, the “**Reviewing Parties**”).
- (b) The Reviewing Parties shall have fourteen (14) days after the filing and service of a Declaration of Disinterestedness to object to the retention of the OCP filing such declaration (the “**Objection Deadline**”). An

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<sup>4</sup> The Debtors reserve the right to increase the OCP Caps, if necessary under the circumstances, upon notice and opportunity to object.

objecting party shall serve its objection upon the other Reviewing Parties and the relevant OCP so that any such objection is actually received on or before the Objection Deadline.

- (c) If no objection is received by the Objection Deadline with respect to an OCP, the Debtors shall be authorized to retain and pay that OCP in accordance with these OCP Procedures, *nunc pro tunc* to the Petition Date, or, if later, the date of employment.
- (d) The Debtors are authorized to pay any retained OCP, without further application to the Court, one-hundred percent (100%) of the fees and disbursements upon submission of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date and the fees and disbursements related thereto; *provided, however*, that each OCP's fees do not exceed the applicable OCP Cap.
- (e) Notwithstanding the foregoing, the Debtors believe that it may be appropriate to allow a monthly cap in excess of the applicable OCP Cap for any OCP who likely will exceed such cap amount but who should not otherwise be required to follow the payment procedure applicable to retained professionals. If the Debtors are able to obtain the agreement of the Reviewing Parties to a higher cap for any OCP, the agreement would be evidenced by the filing of a notice of increased OCP Cap (a "**Cap Increase Notice**"), and the increased OCP Cap will be deemed approved upon the filing of such Cap Increase Notice, without further action by the Court. Absent such an agreement of the Reviewing Parties, such OCP shall file a fee application (a "**Fee Application**") on account of the excess amount over the applicable OCP Cap and apply for compensation and reimbursement of such amount in compliance with sections 330 and 331 of the Bankruptcy Code, the applicable provisions of the Bankruptcy Rules, the Local Rules, the Guidelines for Reviewing Applications for Compensation filed under 11 U.S.C. § 330, and any other procedures and orders of the Court. The U.S. Trustee reserves the right to request that any OCP who is regularly exceeding the applicable OCP Cap be the subject of a retention application pursuant to Bankruptcy Code section 327.
- (f) Each Fee Application shall be served upon the Reviewing Parties. The Reviewing Parties shall then have fifteen (15) days to object to the Fee Application. If, after fifteen (15) days, no objection is filed, the fees requested in the Fee Application shall be deemed approved, and the OCP may be paid one-hundred percent (100%) of its fees and one-hundred percent (100%) of its expenses without the need for further action from such OCP.
- (g) At three-month intervals (each, a "**Quarter**") during the pendency of these Chapter 11 Case, the Debtors shall file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such

Quarter a statement that shall include the following information for each OCP: (i) the name of the OCP; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported Quarter broken down by month; (iii) all postpetition payments made to that OCP to such date; and (iv) a general description of the services rendered by that OCP.

- (h) The Debtors may retain additional OCPs from time to time during these Chapter 11 Cases by (i) including each additional OCP on an amended version of Exhibit A attached hereto that shall be filed with the Court and served on the Reviewing Parties and (ii) having such additional OCP comply with the OCP Procedures.

14. Although certain of the OCPs may hold minor amounts of unsecured claims against the Debtors on account of prepetition services rendered, the Debtors do not believe that any of the OCPs have an interest materially adverse to the Debtors, their creditors, or other parties in interest, and, thus no OCP would be retained who does not meet, if applicable, the special counsel retention requirement of section 327(e) of the Bankruptcy Code.

#### **BASIS FOR RELIEF REQUESTED**

15. The Debtors do not believe that the OCPs are “professionals” within the meaning of Bankruptcy Code section 327(a). According to the case law, the following factors are used to determine whether an entity is a “professional” in this context:

- (a) whether the entity controls, manages, administers, invests, purchases, or sells assets that are significant to the debtor’s reorganization;
- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;
- (d) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor’s estate;
- (e) the extent of the entity’s involvement in the administration of the debtor’s estate; and

- (f) whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

*See, e.g., In re Am. Tissue, Inc.*, 331 B.R. 169, 173 (Bankr. D. Del. 2005); *In re First Merchants Acceptance Corp.*, 1997 WL 873551, at \*2 (D. Del. Dec. 15, 1997) (defining "professionals" within the meaning of Bankruptcy Code section 327 as those whose "occupations . . . play a central role in the administration of the debtor proceeding, and not those occupations which are [merely] involved in the day-to-day mechanics of the debtor's business . . . [or those who are] given discretion or autonomy in some part of administration of the debtor's estate").

16. These factors must be considered in the totality—none of the factors alone is dispositive. *See First Merchants Acceptance Corp.*, 1997 WL 873551, at \*3. Considering all of these factors, the Debtors believe that the OCPs are not "professionals" within the meaning of Bankruptcy Code section 327(a) whose retention must be approved by the Court. In particular, the OCPs will not be involved in the administration of these Chapter 11 Cases, but rather will provide services in connection with the Debtors' ongoing business operations and services ordinarily provided by non-bankruptcy professionals. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in this Motion to avoid any subsequent controversy as to the Debtors' employment and payment of the OCPs during these Chapter 11 Cases. The Debtors will seek specific court authority under Bankruptcy Code section 327 to retain any professionals involved in the actual administration of these Chapter 11 Cases.

17. Courts in this jurisdiction have routinely granted the same or similar relief to debtors in other large cases. *See, e.g., In re Imerys Talc Am., Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Mar. 22, 2019); *In re Mattress Firm, Inc.*, Case No. 18-12241 (CSS) (Bankr. D. Del. Nov. 7, 2018); *In re Southeastern Grocers, LLC*, Case No. 18-10700 (MFW) (Bankr. D. Del. Apr. 23, 2018); *In re Charming Charlie Holdings Inc.*, Case No. 17-12906 (CSS) (Bankr. D.

Del. Jan. 10, 2018); *In re Panda Temple Power, LLC*, Case No. 17-10839 (LSS) (Bankr. D. Del. May 22, 2017); *In re Eastern Outfitters, LLC*, Case No. 17-10243 (LSS) (Bankr. D. Del. March 9, 2017); *In re Filip Technologies, Inc.*, Case No. 16-12192 (KG) (Bankr. D. Del. Nov. 8, 2016); *In re Chaparral Energy, Inc.*, Case No. 16-11144 (LSS) (Bankr. D. Del. June 6, 2016).

18. The Debtors and their estates would be well served by the continued retention of the OCPs because of their prior relationships with the Debtors and their understanding of the Debtors and their operations. It is in the best interest of all creditors and parties in interest to avoid any disruption in the OCPs' services.

#### **CONSENT TO JURISDICTION**

19. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

#### **NOTICE**

20. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the Internal Revenue Service; (d) the creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest unsecured claims; (e) counsel to the DIP Agent and the Prepetition Agents; (f) counsel to Insight Equity; and (g) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

21. A copy of the Motion is available on (a) the Court's website: [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' Claims and Noticing Agent, Kurtzman Carson Consultants LLC, [www.kccllc.net/](http://www.kccllc.net/) EmergeEnergy.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: July 24, 2019  
Wilmington, Delaware

/s/ Brett M. Haywood

**RICHARDS, LAYTON & FINGER, P.A.**

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Paul N. Heath (No. 3704)  
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*Proposed Counsel for Debtors  
and Debtors-in-Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
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 EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. 19-11563 (KBO)  
 :  
 Debtors. : Jointly Administered  
 :  
 : **Obj. Deadline: August 7, 2019 at 4:00 p.m. (ET)**  
 : **Hearing Date: August 14, 2019 at 11:00 a.m. (ET)**  
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**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that, on July 24, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for an Order Authorizing the Employment and Payment of Professionals Utilized in Ordinary Course of Business* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **August 7, 2019 at 4:00 p.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

Market Street, 6<sup>th</sup> Floor, Courtroom 1, Wilmington, Delaware 19801 on **August 14, 2019 at 11:00 a.m. (prevailing Eastern Time).**

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: July 24, 2019  
Wilmington, Delaware

/s/ Brett M. Haywood

**RICHARDS, LAYTON & FINGER, P.A.**

John H. Knight (No. 3848)  
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*Proposed Counsel for Debtors  
and Debtors-in-Possession*

**EXHIBIT A**

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , <sup>1</sup>	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF  
PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”), pursuant to sections 105(a), 327, 328, 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2014, authorizing, but not directing, the Debtors to retain and pay the OCPs pursuant to the OCP Procedures, all as further described in the Motion; and the Court having jurisdiction to consider the Motion and relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing (if any) having been held to consider the relief requested in the Motion; and upon the record of the hearing (if any) and all proceedings had before the Court; and the Court finding that the Motion is in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services, LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Rules; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.

2. Subject to the OCP Procedures (as defined below), the Debtors are authorized, but not directed, in their discretion, to retain and pay reasonable fees and expenses for the services of the OCPs in the ordinary course of its business.

3. The following procedures shall govern the retention and payment of OCPs (the **“OCP Procedures”**):

- (a) Each OCP shall complete a declaration, substantially in the form attached to hereto as Exhibit 2 (each, a **“Declaration of Disinterestedness”**), and provide such declaration to counsel for the Debtors. Upon receipt of such Declaration of Disinterestedness, counsel for the Debtors shall file the same with the Court and have it served on the following parties: (i) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); (ii) counsel to any statutory committee appointed in these Chapter 11 Cases, if any, and (iii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (collectively, the **“Reviewing Parties”**).
- (b) The Reviewing Parties shall have fourteen (14) days after the filing and service of a Declaration of Disinterestedness to object to the retention of the OCP filing such declaration (the **“Objection Deadline”**). An objecting party shall serve its objection upon the other Reviewing Parties and the relevant OCP so that any such objection is actually received on or before the Objection Deadline.
- (c) If no objection is received by the Objection Deadline with respect to an OCP, the Debtors shall be authorized to retain and pay that OCP in

accordance with these OCP Procedures, *nunc pro tunc* to the Petition Date, or, if later, the date of employment.

- (d) The Debtors are authorized to pay any retained OCP, without further application to the Court, one-hundred percent (100%) of the fees and disbursements upon submission of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date and the fees and disbursements related thereto; *provided, however*, that each OCP's fees do not exceed the applicable OCP Cap.
- (e) Notwithstanding the foregoing, the Debtors believe that it may be appropriate to allow a monthly cap in excess of the applicable OCP Cap for any OCP who likely will exceed such cap amount but who should not otherwise be required to follow the payment procedure applicable to retained professionals. If the Debtors are able to obtain the agreement of the Reviewing Parties to a higher cap for any OCP, the agreement would be evidenced by the filing of a notice of increased OCP Cap (a "**Cap Increase Notice**"), and the increased OCP Cap will be deemed approved upon the filing of such Cap Increase Notice, without further action by the Court. Absent such an agreement of the Reviewing Parties, such OCP shall file a fee application (a "**Fee Application**") on account of the excess amount over the applicable OCP Cap and apply for compensation and reimbursement of such amount in compliance with sections 330 and 331 of the Bankruptcy Code, the applicable provisions of the Bankruptcy Rules, the Local Rules, the Guidelines for Reviewing Applications for Compensation filed under 11 U.S.C. § 330, and any other procedures and orders of the Court. The U.S. Trustee reserves the right to request that any OCP who is regularly exceeding the applicable OCP Cap be the subject of a retention application pursuant to Bankruptcy Code section 327.
- (f) Each Fee Application shall be served upon the Reviewing Parties. The Reviewing Parties shall then have fifteen (15) days to object to the Fee Application. If, after fifteen (15) days, no objection is filed, the fees requested in the Fee Application shall be deemed approved, and the OCP may be paid one-hundred percent (100%) of its fees and one-hundred percent (100%) of its expenses without the need for further action from such OCP.
- (g) At three-month intervals (each, a "**Quarter**") during the pendency of these Chapter 11 Case, the Debtors shall file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such Quarter a statement that shall include the following information for each OCP: (i) the name of the OCP; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported Quarter broken down by month; (iii) all postpetition payments made to that OCP to such date; and (iv) a general description of the services rendered by that OCP.

- (h) The Debtors may retain additional OCPs from time to time during these Chapter 11 Cases by (i) including each additional OCP on an amended version of **Exhibit 1** attached hereto that shall be filed with the Court and served on the Reviewing Parties and (ii) having such additional OCP comply with the OCP Procedures.

4. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim, and any such payment is not intended and should not be construed as an assumption of any executory contract or obligation of the Debtors.

5. Notwithstanding the possible applicability of Bankruptcy Rules 7062, 9014, or otherwise, this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

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

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1****List of Ordinary Course Professionals**

<b>Ordinary Course Professional</b>	<b>OCP Address</b>	<b>Type of Service</b>	<b>Applicable OCP Cap</b>
Jackson Walker	1401 McKinney Street, Suite 1900 Houston, Texas 77010 2323 Ross Avenue, Suite 600 Dallas, Texas 75201	Outside Counsel	Tier 1 OCP Cap
Shook Hardy & Bacon	2555 Grand Boulevard Kansas City, Missouri 641108	Outside Counsel	Tier 1 OCP Cap
Opportune LLP	711 Louisiana Street, Suite 3100 Houston, Texas 77002	Asset Impairment Valuation	Tier 2 OCP Cap
A.T. Tax Advisory	40 NE Loop 410, Suite 607 San Antonio, Texas 78216	Property Tax Consultant	Tier 2 OCP Cap

**EXHIBIT 2**

Form of Declaration

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , <sup>1</sup>	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**DECLARATION IN SUPPORT OF EMPLOYMENT OF [\_\_\_\_\_] AS  
PROFESSIONAL UTILIZED IN ORDINARY COURSE OF BUSINESS**

I, \_\_\_\_\_, declare that the following is true to the best of my knowledge, information and belief:

1. I am a [position] of [Firm], located at [Street, City, State ZIP Code] (the “**Firm**”), which has been employed by the debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”) in the ordinary course of the Debtors’ business. The Debtors wish to retain the Firm to continue providing ordinary course services during these Chapter 11 Cases, and the Firm has consented to provide such services. This Declaration is submitted in compliance with the *Order Under 11 U.S.C. §§ 105(a), 327, 330 and 331 Authorizing Employment and Payment of Professionals Utilized in Ordinary Course of Business* (the “**OCP Order**”).

2. The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to the Debtors or to these Chapter 11 Cases for persons that are parties in interest in these Chapter 11 Cases. The Firm does not perform services for any such person in connection with the Debtors or these Chapter

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services, LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

11 Cases, or have any relationship with any such person, their attorneys, or their accountants that would be adverse to the Debtors or their estates.

[PLACEHOLDER FOR DESCRIPTION OF SERVICES RENDERED]

3. As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these Chapter 11 Cases.

4. Neither I nor any principal, partner, director, or officer of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

5. Neither I nor any principal, partner, director or officer of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed.

6. The Firm intends to bill the Debtors for professional services rendered in connection with these Chapter 11 Cases, in accordance with the OCP Order, with such bill to include compensation for services based on the hourly rates set forth below, plus reimbursement of actual and necessary expenses and other charges incurred by the Firm. The principal [attorneys and paralegals/other professionals]/[employees] designated to represent the Debtors and their current standard rates are:

[PLACEHOLDER FOR LIST OF PROFESSIONALS AND HOURLY RATES]

7. The rates set forth above are subject to periodic adjustments to reflect economic and other conditions. Such rates are the Firm's standard rates for work of this nature. The rates

are set at a level designed to fairly compensate the Firm for the work of its [attorneys and paralegals/other professionals]/[employees] and to cover fixed and routine overhead expenses.

8. It is the Firm's policy to charge its clients in all areas of practice for all expenses incurred in connection with a client's case. The expenses charged to clients include, among other things, [PLACEHOLDER FOR DESCRIPTION OF EXPENSES] and, in general, all identifiable expenses that would not have been incurred except for representation of a particular client. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients.

9. No representations or promises have been received by the Firm[, nor by any principal, partner, director, officer, or professional thereof,] as to compensation in connection with these Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code. The Firm has no agreement with any other entity to share with such entity any compensation received by the Firm in connection with these Chapter 11 Cases.

10. The Debtors owe the Firm \$[\_\_\_\_\_] for fees and expenses incurred prior to and unpaid as of the date these Chapter 11 Cases were commenced (the "**Petition Date**"), the payment of which is subject to the limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. The Firm understands that it must file a proof of claim for such fees and expenses unless the amount thereof is properly listed in the Debtors' schedules of liabilities and is not designated therein as contingent, unliquidated or disputed.

11. As of the Petition Date, the Firm [was/was not] party to an agreement for indemnification with the Debtors. [A copy of such agreement is attached as Exhibit A to this Declaration.]

12. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors or other parties in interest in these cases, and upon conclusion of such inquiries, or at

any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

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

Dated: \_\_\_\_\_

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[Name]

[Title]

[FIRM NAME]

Address:

Telephone:

Facsimile:

Email: