

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

In re: § **Chapter 11**
§
HII TECHNOLOGIES, INC., et al.¹ § **15-60070 (DRJ)**
Debtors § **(Jointly Administered)**

**DEBTORS' EMERGENCY MOTION TO ENGAGE GARDEN CITY GROUP AS
NOTICE AND SOLICITATION AGENT *NUNC PRO TUNC***

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED; YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.
**A HEARING HAS BEEN REQUESTED FOR OCTOBER 5, 2015 BEFORE
THE COURT AT 515 RUSK, COURTROOM 400, HOUSTON TX, 77002
AT 2:30 P.M. CENTRAL TIME.**

To the Honorable David R. Jones, United State Bankruptcy Judge:

HII Technologies, Inc. (“HII”) and its affiliated debtors (collectively, the “Debtors”), file this *Emergency Motion To Engage Garden City Group as Notice and Solicitation Agent* pursuant

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

to 28 U.S.C. § 156(c) (“GCG Retention Application”) to retain Garden City Group, LLC (“GCG”). The declaration of Ronda Collum in support of the GCG Retention Application (the “Collum Declaration”) is attached hereto as **Exhibit B**. In support of this GCG Retention Application, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 1334 and 157. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Court can grant the relief under 28 U.S.C. §156(c) and 11 U.S.C. §363.

FACTUAL BACKGROUND AND BASIS FOR EMERGENCY CONSIDERATION

2. The factual background of these Debtors is set forth in detail in the First Day Affidavit of Loretta Cross previously filed with the court at Docket #10. This application seeks to engage GCG as a Noticing and Solicitation agent only—not a claims agent. The Clerk will continue to maintain the claims registry. To the extent language to the contrary exists in the engagement letter or elsewhere, approval of that portion of the engagement is not sought.

3. Emergency relief is justified. The Debtors must notify affected parties of the motion to restrict transfer of shares, which is forthcoming. The relief can be granted without prejudice to any creditors as the noticing agent was already budgeted in the DIP Budget.

4. The Debtors submit this GCG Retention Application for authority to contract with GCG as notice and solicitation agent (the “Notice and Solicitation Agent”) pursuant to 11 U.S.C. § 363 and 28 U.S.C. § 156(c), and in accordance with the terms and conditions of the engagement letter, attached hereto as **Exhibit A** (the “Engagement Letter”).

5. The Debtors solicited bids from various noticing agents and has a reasonable bid from GCG. Because the current motion only seeks to engage GCG as notice and solicitation

agent, and not a claims agent, the duties are reduced, as are the costs. GCG is not being engaged as a “professional person”, rather they are providing a mailing, copying, and noticing service. GCG will also assist with the solicitation of ballots in a plan, if any.

GCG’S QUALIFICATIONS

6. As a specialist in legal administration services, GCG provides comprehensive administrative solutions for chapter 11 cases. GCG is one of the country’s leading chapter 11 administrators, with substantial experience in matters of all sizes and levels of complexity, including numerous large bankruptcy cases pending in several districts across the country, such as: *In re Quicksilver Resources Inc., et al.*, No. 15-10585 (Bankr. D. Del. Mar. 17, 2015); *In re Genco Shipping & Trading Limited, et al.*, No. 14-11108 (Bankr. S.D.N.Y April 21, 2014); *In re ZCO Liquidating Corp. (f/k/a OCZ Tech. Grp., Inc.), et al.*, No. 13-13126 (PJW) (Bankr. D. Del. Dec. 2, 2013); *In re Savient Pharm., Inc., et al.*, No. 13-12680 (MFW) (Bankr. D. Del. Oct. 14, 2013); *In re AMR Corp., et al.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011); *In re Crescent Resources LLC, et al.*, No. 09-11507 (CAG) (Bankr. W.D. Tex. June 10, 2009); *In re The Oceanaire Texas Rest. Co., L.P., et al.*, No. 09-34262 (BJH) (Bankr. N.D. Tex. July 5, 2009); *In re Express Energy Serv. Operating, LP, et al.*, No. 09-38044 (JB) (Bankr. S.D. Tex. Oct. 27, 2009). Based on GCG’s experience, the Debtors believe that GCG is well-qualified to serve as the Notice and Solicitation Agent in these Chapter 11 Cases.

SERVICES TO BE PROVIDED

7. Pursuant to the Engagement Letter, and to the extent requested by the Debtors, GCG has agreed to perform, among other things, the following services as Notice and Solicitation Agent, all in accordance with the guidelines promulgated by the Clerk of the Court, the Judicial Conference of the United States and any orders entered by the Court (collectively, the “Services”):

- (a) Prepare and serve required notices and documents in the Chapter 11 Cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) in the form and manner directed by the Debtors and/or the Court, including, but not limited to:
 - (i) notice of the commencement of the Chapter 11 Cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
 - (ii) notice of any claims bar date;
 - (iii) notices of transfers of claims;
 - (iv) notices of objections to claims and objections to transfers of claims;
 - (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d);
 - (vi) notice of the effective date of any plan; and
 - (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the Chapter 11 Cases;
- (b) Maintain (i) a list of all potential creditors, equity holders and other parties in interest, including those who have filed proofs of claims or proofs of interest, and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010, and update and make said lists available upon request by a party in interest or the Clerk;
- (c) Maintain a post office box or address for the purpose of receiving returned mail, and process all mail received;
- (d) For *all* notices, motions, orders or other pleadings or documents served, prepare and file, or cause to be filed, with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes:
 - (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served;
 - (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses;
 - (iii) the manner of service; and
 - (iv) the date served;

- (e) Assist in the dissemination of information to the public, and respond to requests for administrative information regarding the Chapter 11 Cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (f) If the Chapter 11 Cases are converted to chapter 7, contact the Clerk's office within three (3) days of the notice to the Notice and Solicitation Agent of entry of the order converting the Chapter 11 Cases;
- (g) Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing the Notice and Solicitation Agent and terminating the services of the Notice and Solicitation Agent upon completion of its duties and responsibilities and upon the closing of these Chapter 11 Cases;
- (h) At the close of these Chapter 11 Cases, box and transport all original documents, in proper format, as provided by the Clerk's office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064-1182 or (ii) any other location requested by the Clerk's office;
- (i) Provide balloting and solicitation service, including producing personalized ballots and tabulating creditor ballots on a daily basis;
- (j) Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- (k) Provide temporary employees to process notices as necessary;
- (l) Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time request; and
- (m) Provide such other related noticing and solicitation services as the Debtors may require in connection with these Chapter 11 Cases.

8. GCG's appointment as Notice and Solicitation Agent will provide the Debtors with essential services conducted by experienced professionals. GCG will coordinate with the Debtors' retained professionals in these Chapter 11 Cases to avoid any unnecessary duplication of services. Accordingly, the relief requested in this GCG Retention Application is in the best interests of the Debtors' estates and all parties in interest.

FEES TO BE CHARGED

9. The Debtors propose that the cost of GCG’s Services be paid from the Debtors’ estates pursuant to section 156(c) of title 28 of the United States Code and section 503(b)(1)(A) of the Bankruptcy Code. The Debtors respectfully submit that GCG’s rates for its Services in connection with the notice and solicitation services are competitive and comparable to the rates charged by their competitors for similar services. Indeed, the Debtors conducted a review and competitive comparison of other firms prior to selecting GCG and, following arms’ length negotiations, determined GCG’s rates to be more than reasonable given the quality of GCG’s services and GCG’s prior bankruptcy expertise.

10. Furthermore, the Debtors respectfully submit that the fees and expenses incurred by GCG 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 GCG upon GCG’s submission to the Debtors of invoices, summarizing in reasonable detail, the services rendered and expenses incurred in connection with Services provided by GCG to the Debtors.

11. The Debtors have not provided GCG with a retainer.

12. GCG’s standard pricing for bankruptcy cases is as follows:

GCG Pricing

<u>Services</u> <u>(Unit/Hourly)</u>	<u>Fees</u>
<u>Set-Up Creditor File</u>	
Set-up fee	Waived
Electronic import of creditor data	No per creditor charge
Assist with production of Schedules and Statements of Financial Affairs	Standard hourly rates

Noticing

Notice printing / copies	\$0.10	per page
		(volume discounts apply)
Electronic noticing (e-mail)	\$50	per 1,000
Facsimile noticing (domestic facsimile)	\$0.10	per page
Personalization/labels	\$0.05	each
Legal publication of notice	Quote	
Processing undeliverables	\$0.25	each

Document Management

Sort and prep mail (including handling remains)	Standard hourly rates
Document scanning.....	\$0.12 per image
Monthly document storage (paper)	\$1.50 per box
(electronic)	\$0.02 per image (waived for first three months)

Claims Administration

Association of claimant name and address to database	\$0.15 per claim
Claim acknowledgement postcards.....	\$0.10 each
Processing of claims, including non-conforming claims, supervisory review and application of message codes.....	Standard hourly rates

Public Securities / Balloting / Solicitation and Tabulation

Solicitation and Balloting (including coordination with nominees and Broadridge and processing of master ballots, tabulation, verification and certification of vote)	Standard hourly rates
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Web Site

Creating customized, interactive web site (including e-mail box for creditors)	Standard hourly rates
Monthly maintenance fee.....	\$200 per month
Providing updates to website	Standard hourly rates

Contact Services

Case-specific voice-mail box for creditors	No charge
Interactive Voice Response (“IVR”).....	\$1,900 set up

minute \$0.39 per
 Customer Service Representatives..... \$0.95 per
 minute
 Monthly maintenance charge..... \$100 per month
 Management of Call Center (including handling of claimant
 communications, call backs, e-mails, and other correspondences)..... Standard hourly
 rates

Miscellaneous Expenses

Travel At cost
 Postage, courier, etc At cost
 Copying, facsimile \$0.10 per page

Hourly Billing Rates

Title	Standard Hourly Rates
Administrative, Mailroom and Claims Control	\$45-\$55
Project Administrators	\$70-\$85
Project Supervisors	\$95-\$110
Graphic Support & Technology Staff	\$100-\$200
Project Managers and Senior Project Managers	\$125-\$175
Directors and Asst. Vice Presidents	\$200-\$295
Vice Presidents and above	\$295

13. The rates to be paid by the Debtor are less than GCC’s standard pricing. A copy of the actual pricing schedule to be paid by the Debtor has been sent to the United States Trustee and is available upon request.

DISINTERESTEDNESS

14. To the best of the Debtors’ knowledge, and except as disclosed in the Collum Declaration: (i) GCG is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code; (ii) GCG does not hold or represent an interest adverse to the Debtors’ estates in connection with any matter on which GCG will be employed; and (iii) neither GCG nor any of its employees has any connection with the Debtors, their creditors, the United States Trustee or any other party in interest in these Chapter 11 Cases.

15. The Debtors do not owe GCG any amount for services performed or expenses incurred prior to the Petition Date.

16. In connection with its appointment as Notice and Solicitation Agent in these Chapter 11 Cases, GCG represents, among other things, that it will not employ any past or present employees of the Debtors in connection with its work as the Notice and Solicitation Agent in these Chapter 11 Cases.

17. GCG will conduct ongoing reviews of its files to ensure that no conflict or other disqualifying circumstances exist or arise. If any new facts or circumstances are discovered that would require disclosure, GCG will supplement its disclosure to the Court.

18. To the extent there is any inconsistency between this GCG Retention Application, the Engagement Letter, and any Court order approving this GCG Retention Application (the “GCG Retention Order”), the GCG Retention Order shall govern.

INDEMNIFICATION

19. As part of the overall compensation payable to GCG, the Debtors have agreed to certain indemnification obligations. The Engagement Letter provides that the Debtors will indemnify, defend and hold harmless, GCG, its directors, officers, employees, affiliates, and agents under certain circumstances specified in the Engagement Letter, but not in circumstances of losses resulting from GCG’s gross negligence or willful misconduct. Both the Debtors and GCG believe that the indemnification obligations are customary and reasonable for notice and balloting agents retained in chapter 11 cases.

ARGUMENTS AND AUTHORITIES

20. A debtor-in-possession has the ability to enter into contracts in the ordinary course without court approval. The Debtors in this case have not engaged a noticing agent before and thus require court approval.

21. Under 11 U.S.C. § 363, after notice and an opportunity for a hearing, the Court may authorize the Debtor to use Estate property outside of the ordinary course. To the extent that GCG is copying, mailing, emailing and performing a web service, GCG would not qualify as a “professional” and GCG’s retention merely requires that the Court authorize the contract outside of the ordinary course of business.

22. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases. It states:

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).

23. Accordingly, section 156(c) of title 28 of the United States Code empowers the Court to utilize outside agents and facilities for notice and claims purposes, provided the Debtors’ estates pay the cost of such services. Therefore, for all of the foregoing reasons, the Debtors believe that the retention of GCG as the notice and solicitation agent in these Chapter 11 Cases is necessary and in the best interest of the Debtors, their estates, and their creditors. Furthermore, the Debtors respectfully submit that the fees and expenses that would be incurred

by GCG under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

24. Courts in this and other jurisdictions have approved similar relief in other chapter 11 cases. *See In re Crescent Resources LLC, et al.*, No. 09-11507 (CAG) (Bankr. W.D. Tex. June 10, 2009); *In re The Oceanaire Texas Rest. Co., L.P., et al.*, No. 09-34262 (BJH) (Bankr. N.D. Tex. July 5, 2009); *In re Express Energy Serv. Operating, LP, et al.*, No. 09-38044 (JB) (Bankr. S.D. Tex. Oct. 27, 2009).²

25. In light of the size and complexity of these Chapter 11 Cases, the Debtors respectfully submit that GCG's retention and employment as Notice and Solicitation Agent pursuant to the terms of the Engagement Letter are both necessary and in the best interest of the Debtors' estates and all parties in interest to these Chapter 11 Cases. The Debtors also believe that the terms and conditions of the Engagement Letter are reasonable in light of the large number of creditors, equity security holders and other parties in interest that will be involved in these Chapter 11 Cases.

28 The Debtors request this Court authorize the contract attached as Exhibit A and described herein.

NOTICE

29 Notice of this Motion will be provided by overnight delivery and/or e-mail or facsimile upon the Initial Master Service List, Docket #43.

² Because of the voluminous nature of the orders cited herein, such orders have not been attached to the GCG Retention Application. Copies of these orders are available upon request of the Debtors' proposed counsel.

WHEREFORE, PREMISES CONSIDERED, the Debtors respectfully request the Court enter an order authorizing the engagement of GCG on terms set forth in the Engagement Letter, and for such other relief to which they may be entitled at law or in equity.

Dated: September 24, 2015.

McKool Smith, P.C.

By: /s/ Hugh M. Ray, III
Hugh M. Ray, III
State Bar No. 24004246
Christopher D. Johnson
State Bar No. 24012913
Benjamin W. Hugon
State Bar No. 24078702
600 Travis, Suite 7000
Houston, Texas 77002
Tel: 713-485-7300
Fax: 713-485-7344

Proposed Counsel for the Debtors-in-Possession

CERTIFICATE OF SERVICE

I certify that, on September 24, 2015, a true and correct copy of the foregoing was served via ECF on all parties who receive service in these bankruptcy cases via electronic case filing, and on the parties listed on the most-current Master Service List.

/s/ Hugh M. Ray, III
Hugh M. Ray, III



BANKRUPTCY ADMINISTRATION AGREEMENT

This Bankruptcy Administration Agreement, dated as of September 16, 2015, is between Garden City Group, LLC, a Delaware limited liability company (the "Company"), and Apache Energy Services, LLC and certain of its affiliates (collectively, the "Clients").

The Clients desire to retain the Company to perform certain noticing, claims processing, solicitation and other administrative services for the Clients in their chapter 11 cases anticipated to be filed in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), and the Company desires to be so retained, in accordance with the terms and conditions of this Agreement.

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. Services. The Company agrees to provide the services necessary to perform the tasks specified in the pricing schedule that has been supplied to the Clients. Such services are hereinafter referred to as "Services." The Clients agree and understand that none of the Services constitute legal advice.

2. Payment for Services; Expenses.

2.1. Compensation. As full compensation for the Services to be provided by the Company, the Clients agree to pay the Company its fees as outlined in the pricing schedule that has been supplied to the Clients. In some instances, these fees include commissions and/or markups. Billing rates may be adjusted from time to time by the Company in its reasonable discretion, although billing rates generally are changed on an annual basis.

2.2. Expenses. In addition to the compensation set forth in Section 2.1, the Clients shall reimburse the Company for all out-of-pocket expenses reasonably incurred by the Company in connection with the performance of the Services (subject to Bankruptcy Court determination in the event of an unresolved dispute). The out-of-pocket expenses will be billed on the expense (non-fee) portion of the Company's invoice to the Clients and may include, but are not limited to, postage, banking fees, brokerage fees, costs of messenger and delivery service, travel, filing fees, staff overtime meal expenses and other similar expenses. In some cases, the Company may receive a rebate at the end of a year from a vendor. The Clients and the Company intend to satisfy all expenses incurred in connection with pre-petition Services from advance retainers or contemporaneous payments. All such payments shall be made by wire transfer.

2.3. Billing and Payment. Except as provided in Section 2.2, or specifically set forth below in Section 2.3, the Company shall bill the Clients for its fees and expenses for Services performed under 28 U.S.C. § 156(c) on a monthly basis, and the Clients shall pay the Company within thirty (30) days of its receipt of each such bill in the ordinary course of business (subject to Bankruptcy Court approval in the event of an unresolved dispute). With respect to pre-petition invoices, the same will show application of advance and contemporaneous payments against subsequent and contemporaneous fees and expenses and state an advance amount to replenish the retainer. Unless otherwise agreed to in writing, (i) postage expense, and certain other expenses, and (ii) fees for print notice and media publication (including any markups and/or commissions charged by GCG and included in those fees) must be paid within three (3) business days of the date of GCG's invoice. Each of the Clients is jointly and severally liable for the Company's fees and expenses.

3. Term and Termination.

3.1. Term. The term of this Agreement shall commence on the date hereof and shall continue until performance in full of the Services, unless earlier terminated as set forth herein.

3.2. Termination.

(a) In the event of any material breach of this Agreement by either party hereto, either party may apply to the Bankruptcy Court for an order allowing termination of the Agreement. Grounds for termination include: (i) failure to cure a material breach within thirty (30) days after receipt of written notice by the non-breaching party or (ii) in the case of any breach which requires more than thirty (30) days to effect a cure, failure to commence and continue, in good faith, efforts to cure such breach, provided that such cure shall be effected no later than ninety (90) days after receipt of written notice of such breach. Waiver of any such default or material breach by either party hereto shall not be construed as limiting any right of termination for a subsequent default or material breach.

(b) The Company shall be entitled to an administrative claim for all fees and expenses outstanding at the time of termination (subject to Bankruptcy Court approval in the event of an unresolved dispute).

(c) In accordance with the Bankruptcy Court's Local Rules, procedures and/or directives, or in the absence thereof, as soon as practicable (i) following the entry of a final decree closing the chapter 11 cases, or (ii) following the conversion of the chapter 11 cases to chapter 7, the Company shall forward all original proofs of claim to the Federal Archives Record Administration. For all other documents in the Company's actual or constructive possession (including, but not limited to, letters, e-mails, facsimiles, other correspondence and all undeliverable and/or returned mail), the Company shall retain paper copies and electronic copies for one (1) year (i) following the entry of a final decree closing the chapter 11 cases, or (ii) following the conversion of the chapter 11 cases to chapter 7. Following the one (1) year retention period, the Company shall have the right to destroy all such documents. This provision shall not affect the Company's normal course business processes for archives and back-up tapes.

4. Independent Contractor. It is understood and agreed that the Company, through itself or any of its agents, shall perform the Services as an independent contractor. Neither the Company nor any of its employees shall be deemed to be an employee of the Clients. Neither the Company nor any of its employees shall be entitled to any benefits provided by the Clients to their employees, and the Clients will make no deductions from any of the payments due to the Company hereunder for state or federal tax purposes. The Company agrees that the Company shall be responsible for any and all taxes and other payments due on payments received hereunder by the Company from the Clients. Nothing in this Agreement requires the Clients to use the Company for any future work relating to the Services, and, in the event the Clients decide to use another party for such future work, the Company agrees to cooperate fully with the Clients to ensure a smooth transition to the new party.

5. Accuracy of Client Supplied Information. The Clients are responsible for the accuracy of all programs, data and other information they submit to the Company and for the output of such information. The Company may undertake to place such data and information into certain systems and programs. The Company does not verify information provided by the Clients.

6. Confidential Information.

6.1. Confidentiality. In connection with this Agreement, each of the Clients and the Company (as the case may be, the “Disclosing Party”) may disclose to the Company or the Clients (as the case may be, the “Receiving Party”) certain information (a) that is marked or otherwise identified in writing as confidential or proprietary information of the Disclosing Party (“Confidential Information”) prior to or upon receipt by the Receiving Party; or (b) which the Receiving Party reasonably should recognize from the circumstances surrounding the disclosure to be Confidential Information. The Receiving Party (x) shall hold all Confidential Information in confidence and will use such information only for the purposes of fulfilling the Receiving Party’s obligations hereunder, and for no other purpose, and (y) shall not disclose, provide, disseminate or otherwise make available any Confidential Information to any third party other than for the purposes of fulfilling the Receiving Party’s obligations hereunder, in either case, without the express prior written permission of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information pursuant to a validly issued subpoena or order of a court of competent jurisdiction, provided, however, that the Receiving Party must provide the Disclosing Party with prompt written notice of such subpoena or court order so that the Disclosing Party may seek a protective order or other appropriate remedy, and the Receiving Party shall reasonably cooperate with the Disclosing Party’s efforts to obtain same.

6.2. Protection of Intellectual Property. The Clients acknowledge that the Company’s intellectual property, including, without limitation, the Company’s inventions (whether or not patentable), processes, trade secrets and know how are of ultimate importance to the Company. Accordingly, the Clients agree to use their best efforts to protect such intellectual property, and shall not, either during the term of this Agreement, or subsequent to its termination, utilize, reveal or disclose any of such intellectual property. The Clients understand that the software programs and other materials furnished by the Company pursuant to this Agreement, and/or developed during the course of this Agreement by the Company, are the sole property of the Company. The term “program” shall include, without limitation, data processing programs, check printing programs, specifications, applications, routines, sub-routines, procedural manuals and documentation. The Clients further agree that any ideas, concepts, know-how or techniques relating to the claims management software used or developed by the Company during the course of this Agreement shall be the exclusive property of the Company.

6.3. Scope. The foregoing obligations in Sections 6.1 and 6.2 shall not apply to (a) information that is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (b) information that is known by the Receiving Party prior to the time of disclosure by the Disclosing Party to the Receiving Party; (c) information that is obtained from a third party who, to the Receiving Party’s knowledge, has the right to make such disclosure without restriction; (d) any disclosure required by applicable law; or (e) information that is released for publication by the Disclosing Party in writing. The obligations set forth under Sections 6.1 and 6.2 shall survive the termination of this Agreement.

7. Limitation on Damages. The Company shall be without liability to the Clients with respect to anything done or omitted to be done, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. In no event shall liability to the Clients for any claims, losses, costs, fines, penalties or damages, including court costs and reasonable attorneys’ fees (collectively, “Losses”), whether direct or indirect, arising out of or in connection with or related to this Agreement, exceed the total amount billed or billable to the Clients for the portion of the particular work which gave rise to the Losses. Under no circumstances will the Company be liable to the Clients for any special, consequential or incidental damages incurred by the Clients relating to this Agreement or the performance of Services hereunder, regardless of whether the Clients’ claim is for breach of warranty, contract, tort (including negligence),

strict liability or otherwise.

8. Indemnification. The Clients, jointly and severally, hereby indemnify and hold harmless the Company and its directors, officers, employees, affiliates and agents against any losses incurred by the Company arising out of, in connection with or related to (a) any gross negligence or willful misconduct by the Clients, their employees, agents or representatives, or any misrepresentations made by such persons to third parties in connection with the Company's acts or omissions in connection with its rendering of the Services; (b) any breach of this Agreement by any of the Clients; or (c) any erroneous instructions or information provided to the Company by any of the Clients for use in providing the Services.

9. Jurisdiction. This Agreement is subject to the approval of the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction over all matters regarding this Agreement.

10. Force Majeure. Whenever performance by the Company of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportational disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions or by reason of any other matter beyond the Company'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.

11. Notice. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid or overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed, five (5) days after the date of deposit in the United States mail, or, if sent by overnight courier, one (1) business day after delivery to such courier, as follows: if to the Company, to Garden City Group, LLC, 1985 Marcus Avenue, Suite 200, Lake Success, New York 11042, Attention: David Isaac, Chief Executive Officer; and if to the Clients, to Stout Risius Ross, Inc., 815 Walker, Suite 1140, Houston, TX 77002, Attention: Loretta Cross.

12. Governing Law. This contract will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws provisions).

13. Severability. All clauses and covenants contained in this Agreement are severable and in the event any of them are held to be invalid by any court having competent jurisdiction, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement will be interpreted as if such invalid clauses or covenants were not contained herein.

14. Assignment. This Agreement and the rights and obligations of the Company and the Clients hereunder shall bind and inure to the benefit of any successors or assigns thereto.

15. General. This Agreement supersedes and replaces any existing agreement entered into by the Company and the Clients relating generally to the same subject matter, and may be modified only in a writing signed by the Company and the Clients. The paragraph headings in this Agreement are included only for convenience, do not in any manner modify or limit any of the provisions of this Agreement and may not be used in the interpretation of this Agreement. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. The Clients shall file an application with the Bankruptcy Court seeking approval of this Agreement (the "Application"). If an order is entered approving such

Application (the "Retention Order"), any discrepancies between this Agreement, the Application and the Retention Order shall be controlled by the Application and the Retention Order.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

Apache Energy Sevices, LLC

Garden City Group, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

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

In re:)	Chapter 11
)	
HII TECHNOLOGIES, INC., et al.)	Case No. 15-60070 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	
)	

**DECLARATION OF RONDA COLLUM IN SUPPORT OF
DEBTORS’ APPLICATION TO EMPLOY AND RETAIN
GARDEN CITY GROUP, LLC AS NOTICING AND
SOLICITATION AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

Ronda Collum, makes this declaration under 28 U.S.C. § 1746:

1. I am a Senior Director of Garden City Group, LLC (“**GCG**”), and I am authorized to make and submit this declaration on behalf of GCG. This declaration is submitted in support of the application (the “**GCG Retention Application**”) of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for authorization pursuant to 28 U.S.C. § 156(c) to employ and retain GCG as noticing and solicitation agent (the “**Noticing and Solicitation Agent**”) in connection with the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) and in accordance with the terms and conditions of the engagement letter, attached to the GCG Retention Application as Exhibit A (the “**Engagement Letter**”). The statements contained herein are based upon personal knowledge.

2. GCG is one of the country’s leading chapter 11 administrators with expertise in all areas of bankruptcy administration, including, but not limited to, balloting administration and distribution, and GCG is well-qualified to provide administrative services in connection with these Chapter 11 Cases. GCG has been retained as the noticing and solicitation agent in a number of large chapter 11 cases in several jurisdictions, including: In re

Quicksilver Resources Inc., et al., No. 15-10585 (Bankr. D. Del. Mar. 17, 2015); In re Genco Shipping & Trading Limited, et al., No. 14-11108 (Bankr. S.D.N.Y. April 21, 2014); In re ZCO Liquidating Corp. (f/k/a OCZ Tech. Grp., Inc.), et al., No. 13-13126 (PJW) (Bankr. D. Del. Dec. 2, 2013); In re Savient Pharm., Inc., et al., No. 13-12680 (MFW) (Bankr. D. Del. Oct. 14, 2013); In re Maxcom Telecomunicaciones, S.A.B. de C.V., et al., No. 13-11839 (PJW) (Bankr. D. Del. July 23, 2013); In re Exide Techs., No. 13-11482 (KJC) (Bankr. D. Del. June 10, 2013); In re Vivaro Corp., et al., No. 12-13810 (MG) (Bankr. S.D.N.Y. Sept. 5, 2012); In re Arcapita Bank B.S.C.(c), et al., No. 12-11076 (SHL) (Bankr. S.D.N.Y. Mar. 19, 2012); In re AMR Corp., et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011); In re Crescent Resources LLC, et al., No. 09-11507 (CAG) (Bankr. W.D. Tex. June 10, 2009); In re The Oceanaire Texas Rest. Co., L.P., et al., No. 09-34262 (BJH) (Bankr. N.D. Tex. July 5, 2009); In re Express Energy Serv. Operating, LP, et al., No. 09-38044 (JB) (Bankr. S.D. Tex. Oct. 27, 2009).

3. The Debtors selected GCG to serve as the Noticing and Solicitation Agent for the Debtors' estates, as set forth in more detail in the GCG Retention Application filed contemporaneously herewith. To the best of my knowledge, neither GCG, nor any of its professional personnel, have any relationship with the Debtors that would impair GCG's ability to serve as Noticing and Solicitation Agent. GCG may have relationships with some of the Debtors' creditors, but any such relationships are in matters completely unrelated to these Chapter 11 Cases, either as vendors or in cases where GCG serves as a settlement claims administrator or bankruptcy administrator. GCG's assistance in the cases where GCG acts as a settlement claims administrator in the non-bankruptcy context has been primarily related to the design and dissemination of legal notices and other administrative functions in such matters. In addition, GCG personnel may have relationships with some of the Debtors' creditors; however,

such relationships are of a personal, financial nature and completely unrelated to these Chapter 11 Cases. GCG has working relationships with certain of the professionals retained by the Debtors and other parties herein, but such relationships are completely unrelated to these Chapter 11 Cases. GCG (i) has represented, and will continue to represent, clients in matters unrelated to these Chapter 11 Cases and (ii) has had, and will continue to have, relationships in the ordinary course of its business with certain vendors and professionals in matters unrelated to these Chapter 11 Cases.

4. GCG is a wholly owned subsidiary of Crawford & Company. I am advised that Crawford & Company has no material relationship with the Debtors, and while it may have rendered services to certain creditors, received services from certain creditors or have a vendor relationship with certain creditors, such relationships were (or are) in no way connected to GCG's retention by the Debtors in these Chapter 11 Cases.

5. GCG is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code, in that GCG and its professional personnel:

- 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 the filing of these Chapter 11 Cases, directors, officers or employees of the Debtors; and
- c. do not have an interest materially adverse to the interests 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.

6. GCG has not been retained to assist any entity or person other than the Debtors on matters relating to, or in connection with, these Chapter 11 Cases. If GCG's proposed retention is approved by this Court, GCG will not accept any engagement or perform any services for any entity or person other than the Debtors in these Chapter 11 Cases without

the prior express consent and authority of the Debtors. In addition, GCG may provide professional services to entities or persons that may be creditors or parties in interest in these Chapter 11 Cases, which services do not relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

7. GCG has not received a retainer from the Debtors.
8. GCG represents, among other things, that:
 - a. It will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Noticing and Solicitation Agent;
 - b. By accepting employment in these Chapter 11 Cases, GCG waives any right to receive compensation from the United States government;
 - c. In its capacity as Noticing and Solicitation Agent, GCG will not be an agent of the United States and will not act on behalf of the United States; and
 - d. GCG will not employ any past or present employees of the Debtors in connection with its work as Noticing and Solicitation Agent.
9. Subject to the Court's approval, the Debtors have agreed to compensate

GCG for professional services rendered in connection with these Chapter 11 Cases according to the terms and conditions of the Engagement Letter and any Court orders approving the retention of GCG.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed on this 24th day of September, 2015 at Lake Success, New York.



Ronda Collum
Senior Director
Garden City Group, LLC

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

In re:	§	
HII TECHNOLOGIES, INC., et al.	§	Chapter 11
Debtor	§	Case No. 15-60070 (DRJ)
	§	(Jointly Administered)

ORDER APPROVING DEBTORS' EMERGENCY MOTION TO ENGAGE GARDEN CITY GROUP AS NOTICE AND SOLICITATION AGENT

(Relates to Docket #____)

On consideration of the Debtors' *Emergency Motion to Engage Garden City Group as Notice and Solicitation Agent* (Docket #____), the Court finds that GCG is a disinterested person under the meaning of 11 U.S.C. §101(14) and that their engagement is beneficial to the estate and necessary. Moreover, delay in the engagement would cause harm to the Debtors and creditors, so any restriction of Fed. R. Bankr. P. 6003 is met and the Motion is GRANTED and it is therefore:

ORDERED that the Debtors are authorized to enter into the Engagement Agreement attached to the Motion as Exhibit A, and it is further

ORDERED that the expenses of GCG incurred by the estates under the Engagement Agreement will be administrative expenses, and it is further

ORDERED that GCG may be employed to provide services under 28 U.S.C. §156(c) but GCG will not manage the claims docket unless otherwise ordered.

SIGNED: _____, 2015.

UNITED STATES BANKRUPTCY JUDGE

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

In re:	§	Chapter 11
	§	
HII TECHNOLOGIES, INC., et al.	§	15-60070 (DRJ)
Debtors	§	(Jointly Administered)

INITIAL MASTER SERVICE LIST – September 23, 2015

DEBTORS:

HII Technologies, Inc., et al.
Attn: Loretta Cross, CRO
8588 Katy Freeway Ste 430
Houston, TX 77024

Internal Revenue Service
Centralized Insolvency Operation
PO Box 7346
Philadelphia, PA 19101-7346

DEBTORS' MANAGEMENT:

Stout, Risius, Ross
Attn: Loretta Cross
815 Walker Ste 1140
Houston, TX 77002

Texas Workforce Commission
Bankruptcy Section
P O Box 149080
Austin, TX 78714-9080

DEBTORS' COUNSEL:

McKool Smith PC
Attn: Hugh M. Ray, III
600 Travis Ste 7000
Houston, TX 77002

Texas Comptroller of Public Accounts
Revenue Accounting Division
Bankruptcy Section
P O Box 13528
Austin, TX 78711-3528

U.S. TRUSTEE:

Office of the US Trustee
515 Rusk Ave Ste 3516
Houston, TX 77002
Attn: Hector Duran
Hector.duran.jr@usdoj.gov

SECURED CREDITORS:

BCL-Equipment Leasing, LLC
450 Skokie Blvd Bldg 600
Northbrook, IL 60062

GOVERNMENTAL

ENTITIES:

Securities and Exchange Commission
Fort Worth Regional Office
801 Cherry Street Ste 1900, Unit 18
Fort Worth, TX 76102

Heartland Bank
as Administrating Agent for Bank Group
1 Information Way Ste 300
Little Rock AR 72202

Nations Fund I, LLC
101 Merritt Seven 5th Floor
Norwalk, CT 06851

20 LARGEST CONSOLIDATED:

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10880 Alcott Drive
Houston, TX 77043

Chickering, Ken
10302 Lynbrook Hollow
Houston, TX 77042

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Enterprise Fleet Management
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Kansas City, MO 64180

Fischer Bush Equipment Rentals
155 Commerce Blvd
Loveland, OH 45140

GSS Construction & Oilfield Supply
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Bossier City, LA 71111

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Howard Supply Company
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Houston, TX 77210-4869

Holt CAT Power Systems
P O Box 911975
Dallas, TX 75391-1975

LHB Energy Consultants, LLC
P O Box 724
Monahans, TX 79756-0724

Nitro-Lift Technologies, LLC
P O Box 678456
Dallas, TX 75267-8456

Odessa Pump & Equipment
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Midland, TX 79711-0429

SJ Water Solutions, LLC
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Kilgore, TX 75662

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Atlanta, GA 30384

Sunstream Services Co.
P O Box 514
Grandview, TX 76050

Sutherland Asbill & Brennan LLP
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Houston, TX 77002-6760

Texas State Comptroller
Comptroller of Public Accounts
P O Box 149359
Austin, TX 78711-4935

Timekeepers, Inc.
41109 Interstate 10 West #C
Boerne, TX 78006

Titan Test Pumps
P O Box 1419
El Campo, TX 77437

United Rentals (North America), Inc.
P O Box 840514
Dallas, TX 75284-0514

WorldWide Power Products
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