

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

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| In re                          | § |                                |
|                                | § | Chapter 11                     |
|                                | § |                                |
| EXPRESS ENERGY SERVICES        | § |                                |
| OPERATING, LP, <i>et al.</i> , | § | Case No. 09-____ (____)        |
|                                | § |                                |
|                                | § |                                |
| Debtors.                       | § |                                |
|                                | § | Joint Administration Requested |

**DEBTORS' APPLICATION TO EMPLOY AND RETAIN  
ALVAREZ & MARSAL NORTH AMERICA, LLC AS FINANCIAL AND  
RESTRUCTURING ADVISORS TO DEBTORS AND DEBTORS IN POSSESSION  
PURSUANT TO SECTIONS 327(A) AND 328 OF THE BANKRUPTCY CODE**

**THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE APPLICATION 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 TWENTY DAYS OF THE DATE THIS APPLICATION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE APPLICATION 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 APPLICATION 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 APPLICATION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Express Energy Services Operating, LP ("**EES**") and its affiliated debtors in the above referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"),<sup>1</sup> file this application (the "**Application**") for authority to employ and retain Alvarez & Marsal North America, LLC, together with employees of its affiliates (all of which are

<sup>1</sup> A list of the Debtors in these chapter 11 cases is attached hereto as **Exhibit A**.

wholly-owned by its parent company and employees), its wholly owned subsidiaries, and independent contractors (collectively “**Alvarez & Marsal**”) as financial and restructuring advisors to the Debtors, nunc pro tunc to the Commencement Date (as defined below) and respectfully represent as follows:

**I.**

**BACKGROUND**

1. On October 27, 2009 (the “**Commencement Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. Information regarding the Debtors’ business and events leading to the Debtors’ bankruptcy filings can be found in the Declaration of Darron Anderson in Support of the Debtors’ Chapter 11 Petitions and First Day Motions, filed contemporaneously herewith.

**II.**

**JURISDICTION**

3. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**III.**

**RELIEF REQUESTED**

4. By this Application, the Debtors respectfully request, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), entry of an order, substantially in the form attached hereto as **Exhibit E**, authorizing the Debtors to retain and employ Alvarez & Marsal as financial and restructuring advisors nunc pro tunc to the Commencement Date and in accordance with the terms and conditions of that certain engagement letter and indemnification agreement, dated June 2, 2009, a copy of which is annexed hereto as **Exhibit C** (the "**Engagement Letter**"). In support of this Application, the Debtors rely upon the Declaration of Dean Swick (the "**Swick Declaration**"), a copy of which is annexed hereto as **Exhibit B**.

**IV.**

**THE RETENTION OF ALVAREZ & MARSAL**

5. In consideration of the size and complexity of their businesses, as well as the exigencies of the circumstances, the Debtors have determined that the services of experienced financial advisors will substantially enhance their attempts to maximize the value of their estates. Alvarez & Marsal is well qualified to provide these services in light of their extensive knowledge and expertise with respect to these chapter 11 proceedings.

6. Alvarez & Marsal specializes in interim management, crisis management, turnaround consulting, operational due diligence, creditor advisory services, and financial and operational restructuring. Alvarez & Marsal's debtor advisory services have included a wide range of activities targeted at stabilizing and improving a company's financial position, including developing or validating forecasts, business plans and related assessments of a business' strategic position; monitoring and managing cash, cash flow and supplier relationships; assessing and

recommending cost reduction strategies; and designing and negotiating financial restructuring packages.

7. In addition, Alvarez & Marsal is familiar with the Debtors' businesses, financial affairs, and capital structure. Since the firm's initial engagement on June 2, 2009, the Alvarez & Marsal personnel providing services to the Debtors (the "**Alvarez & Marsal Professionals**") have worked closely with the Debtors' management and other professionals in assisting with the requirements of these chapter 11 cases. Consequently, the Debtors believe that Alvarez & Marsal has developed significant relevant experience and expertise regarding the Debtors and the unique circumstances of this case. For these reasons, Alvarez & Marsal is both well qualified and uniquely suited to deal effectively and efficiently with matters that may arise in the context of these cases. Accordingly, the Debtors submit that the retention of Alvarez & Marsal on the terms and conditions set forth herein is necessary and appropriate, is in the best interests of the Debtors' estates, creditors, and all other parties in interest, and should be granted in all respects.

**A. Scope of Services**

8. Among other things, Alvarez & Marsal will provide assistance to the Debtors with respect to management of the overall restructuring process, the development of ongoing business and financial plans, and supporting restructuring negotiations among the Debtors, their advisors and their creditors with respect to an overall exit strategy for their chapter 11 cases.

9. Alvarez & Marsal will provide such restructuring support services as Alvarez & Marsal and the Debtors shall deem appropriate and feasible in order to manage and advise the Debtors in the course of these chapter 11 cases, including, but not limited to:

- i. assistance to the Debtors in the preparation of financial-related disclosures required by the Court, including the Debtors' schedules of assets and liabilities, statements of financial affairs and monthly operating reports;
- ii. assistance to the Debtors with information and analyses required pursuant to the Debtors' debtor-in-possession financing;
- iii. assistance with the identification and implementation of short-term cash management procedures;
- iv. advisory assistance in connection with the development and implementation of key employee compensation and other critical employee benefit programs;
- v. assistance with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;
- vi. assistance to the Debtors' management team and their counsel on coordinating resources related to the ongoing reorganization effort;
- vii. assistance in the preparation of financial information for distribution to creditors and others, including, but not limited to, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Court approval is sought;
- viii. attendance at meetings and assistance in discussions with potential investors, banks, and other secured lenders, any official committee(s) appointed in these chapter 11 cases, the United States Trustee, other parties in interest and professionals hired by same, as requested;
- ix. analysis of creditor claims by type, entity, and individual claim, including assistance with development of databases, as necessary, to track such claims;
- x. assistance in the preparation of information and analysis necessary for the confirmation of a plan of reorganization in these chapter 11 cases, including information contained in the disclosure statement;
- xi. assistance in the evaluation and analysis of avoidance actions, including fraudulent conveyances and preferential transfers;
- xii. assistance in the analysis/preparation of information necessary to assess the tax attributes related to the confirmation of a plan of reorganization in these chapter 11 cases, including the development of the related tax consequences contained in the disclosure statement;
- xiii. litigation advisory services with respect to accounting and tax matters, along with expert witness testimony on case related issues as required by the Debtors; and

- xiv. rendering such other general business consulting or such other assistance as Debtors' management or counsel may deem necessary and consistent with the role of a financial and restructuring advisor.

**B. Alvarez & Marsal's Disinterestedness**

10. To the best of the Debtors' knowledge, information and belief, other than as set forth in the Swick Declaration, Alvarez & Marsal (i) has no connection with the Debtors, their creditors, other parties in interest, the attorneys or accountants of any of the foregoing, the U.S. Trustee or anyone employed in the Office of the U.S. Trustee; (ii) does not hold any interest adverse to the Debtors' estates; and (iii) believes it is a "disinterested person" as defined by section 101(14) of the Bankruptcy Code.

11. In addition, as set forth in the Swick Declaration, if any new material facts or relationships are discovered or arise, Alvarez & Marsal will provide the Court with a supplemental declaration.

**C. Terms of Retention**

12. Subject to approval by the Court, the Debtors propose to employ and retain Alvarez & Marsal to serve as the Debtors' financial and restructuring advisors on the terms and conditions set forth in the Engagement Letter.

13. Compensation. In accordance with the terms of the Engagement Letter, Alvarez & Marsal will be paid by the Debtors for the services of the Alvarez & Marsal Professionals at their customary hourly billing rates which shall be subject to the following ranges:

|                    |             |
|--------------------|-------------|
| Managing Directors | \$625-\$850 |
| Directors          | \$450-\$625 |
| Associates         | \$300-\$450 |
| Analysts           | \$225-\$300 |

Such rates and ranges shall be subject to adjustment annually.

14. Alvarez & Marsal will also seek compensation and reimbursement of out-of-pocket expenses as specified in the Engagement Letter, such as travel, lodging, duplicating, computer research, messenger and telephone charges, with the payment of such fees and expenses to be approved in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and any orders of this Court. The fees and expenses described above are consistent with Alvarez & Marsal’s normal and customary billing practices for cases of this size and complexity which require the level and scope of services outlined in the Engagement Letter.

15. The Debtors also agreed to indemnify Alvarez & Marsal in accordance with the indemnification agreement that is attached to the Engagement Letter. Alvarez & Marsal and the Debtors believe that these provisions also are customary and reasonable for turnaround advisory engagements, both out of court and in chapter 11. See In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000).

16. Section 328(a) of the Bankruptcy Code provides, in part, that a debtor “with the court’s approval, may employ or authorize the employment of a professional person under section 327 on any reasonable terms and conditions of employment, including a retainer, on an hourly basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). The Debtors request approval of the terms of Alvarez & Marsal’s engagement, including (a) the terms of the Engagement Letter and (b) the indemnification provisions contained therein, subject to the standard of review provided in section 328(a) of the Bankruptcy Code.

**D. Fees**

17. The Debtors understand that Alvarez & Marsal intends to apply to the Court for allowance of compensation and reimbursement of expenses for its financial and

restructuring advisory services in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, orders of this Court and guidelines established by the U.S. Trustee.

18. Alvarez & Marsal received \$100,000 as a retainer in connection with preparing for and conducting the filing of these Chapter 11 cases, as described in the Engagement Letter. In the 90 days prior to the Commencement Date, Alvarez & Marsal received retainers and payments totaling \$1,089,237.37 in the aggregate for services performed for the Debtors. Alvarez & Marsal has applied these funds to amounts due for services rendered and expenses incurred prior to the Commencement Date. A precise disclosure of the amounts or credits held, if any, as of the Commencement Date will be provided in Alvarez & Marsal's first interim fee application for postpetition services and expenses to be rendered or incurred for or on behalf of the Debtors. The unapplied residual retainer, which is estimated to total approximately \$110,000, will not be segregated by Alvarez & Marsal in a separate account, and will be held until the end of these chapter 11 cases and applied to Alvarez & Marsal's final approved fees in these proceedings.

19. Given the numerous issues that Alvarez & Marsal may be required to address in the performance of their services, Alvarez & Marsal's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services for engagements of this nature in an out-of-court context, as well as in chapter 11, the Debtors submit that the fee arrangements set forth herein are reasonable under the standards set forth in section 328(a) of the Bankruptcy Code. The terms and conditions of this engagement appropriately reflect (a) the nature of the services to be provided by Alvarez &

Marsal and (b) the fee structures and indemnification provisions typically utilized by Alvarez & Marsal and other leading financial and restructuring advisory firms.

**E. Dispute Resolution Procedures**

20. The Debtors and Alvarez & Marsal have agreed, subject to the court's approval of this Application, that notwithstanding the Engagement Letter: (a) any controversy or claim with respect to, in connection with, arising out of, or in any way related to this Application or the services provided by Alvarez & Marsal to the Debtors as outlined in this Application, including any matter involving a successor in interest or agent of any of the Debtors or of Alvarez & Marsal, shall be brought in this Court or the United States District Court for the Southern District of Texas (the "**District Court**") (if the reference is withdrawn); (b) Alvarez & Marsal and the Debtors and any and all successors and assigns thereof, consent to the jurisdiction and venue of such court as the sole and exclusive forum (unless such courts do not have or retain jurisdiction over such claims or controversies) for the resolution of such claims, causes of actions, or lawsuits; (c) Alvarez & Marsal and the Debtors, and any and all successors and assigns thereof, waive trial by jury, such waiver being informed and freely made; (d) if this Court, or the District Court (if the reference is withdrawn), does not have or retain jurisdiction over the foregoing claims and controversies, Alvarez & Marsal and the Debtors, and any and all successors and assigns thereof, will submit first to non-binding mediation; and, if mediation is not successful, then to binding arbitration, in accordance with the dispute resolution procedures (as set forth in **Exhibit D** attached hereto); and (e) judgment on any arbitration award may be entered in any court having proper jurisdiction. By this Application, the Debtors seek approval of this agreement by the Court. Further, Alvarez & Marsal has agreed not to raise or assert any defense based upon jurisdiction, venue, abstention or otherwise to the jurisdiction and venue of this Court or the District Court (if the reference is withdrawn) to hear or determine any

controversy or claims with respect to, in connection with, arising out of, or in any way related to this Application or the services provided hereunder.

V.

**APPLICABLE AUTHORITY**

21. The Debtors submit that the retention of Alvarez & Marsal under the terms described herein is appropriate under sections 327(a), 328, and 1107(b) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code empowers the trustee, with the Court's approval, to employ professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 101(14) of the Bankruptcy Code defines a "disinterested person" as a person that:

- (a) is not a creditor, an equity security holder, or an insider;
- (b) is not and was not, within 2 years before the Commencement Date, a director, officer, or employee of the debtor; and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14)

22. Further, section 1107(b) of the Bankruptcy Code provides that "a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b). Alvarez & Marsal's prepetition relationship with the Debtors is therefore not an impediment to Alvarez & Marsal's retention as the Debtors' postpetition financial and restructuring advisors.

23. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person “on any reasonable terms and conditions of employment, including on a retainer . . .” 11 U.S.C. § 328(a). The Debtors submit that the terms and conditions of Alvarez & Marsal’s retention as described herein, including the proposed compensation and indemnification terms, are reasonable and in keeping with the terms and conditions typical for engagements of this size and character. Since the Debtors will require substantial assistance with the reorganization process, it is reasonable for the Debtors to seek to employ and retain Alvarez & Marsal to serve as its financial and restructuring advisors on the terms and conditions set forth herein.

## VI.

### NOTICE

24. The Debtors have served notice of this Application on (i) the Office of the United States Trustee for the Southern District of Texas; (ii) Credit Suisse, as administrative agent for (a) the Debtors’ prepetition secured lenders under the Credit Agreement dated as of July 11, 2008, as amended, and (b) the Swap Agreement dated as of July 11, 2008; (iii) Akin Gump Strauss Hauer & Feld (Attn: J. Michael Chambers and Charles R. Gibbs), attorneys for Credit Suisse; (iv) the Debtors’ 20 largest unsecured creditors (on a consolidated basis); (v) all applicable government agencies, to the extent required by the Bankruptcy Rules or the Bankruptcy Local Rules; and (vi) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: October 27, 2009  
Houston, Texas

/s/ Darron Anderson  
Name: Darron Anderson  
Title: Chief Executive Officer

**EXHIBIT A****LIST OF DEBTORS**

| <b>Debtor</b>                                    | <b>Last Four Digits of Federal Tax I.D. No.</b> |
|--|---|
| Express Energy Services Operating, LP            | 7644  |
| Express Energy Services (2008) LLC               | 3087  |
| Express Energy Services Holding, LP              | 7122  |
| Express Energy Services GP, LLC                  | 7083  |
| Express Energy Services CT, LP                   | 8432  |
| Express Energy Services Ark, LP                  | 5287  |
| Express Energy Services P&A, LP                  | 8402  |
| Express Energy Services WL, LP                   | 2834  |
| Express – Byrd R&S GP, LLC                       | 7556  |
| Express – Byrd R&S Oilfield Services, L.P.       | 7580  |
| Express – MBCC GP, LLC                           | 0760  |
| Express – MBCC, Ltd.                             | 0802  |
| Express – Mike Byrd Casing Crews GP, LLC         | 0852  |
| Express – Mike Byrd Casing Crews, Ltd.           | 0938  |
| Express – R&S Tong Services GP, LLC              | 2230  |
| Express – R&S Tong Services, Ltd.                | 7465  |
| Express – BAH Leasing GP, LLC                    | 0510  |
| Express – BAH Leasing, Ltd.                      | 0708  |
| D&D Tongs GP, LLC                                | 6566  |
| D&D Tongs, L.P.                                  | 6586  |
| Express – North Trail Oilfield Services, GP, LLC | 7506  |
| Express – North Trail Oilfield Services, Ltd.    | 7526  |
| Express – Ace Rat Hole Service GP, LLC           | 6617  |
| Express – Ace Rat Hole Service, Ltd.             | 6632  |

**EXHIBIT B**

**SWICK DECLARATION**

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

|                                |   |                                       |
|--------------------------------|---|---------------------------------------|
| <b>In re</b>                   | § |                                       |
|                                | § | <b>Chapter 11</b>                     |
|                                | § |                                       |
| <b>EXPRESS ENERGY SERVICES</b> | § |                                       |
| <b>OPERATING, LP, et al.,</b>  | § | <b>Case No. 09-_____ (___)</b>        |
|                                | § |                                       |
|                                | § |                                       |
| <b>Debtors.</b>                | § |                                       |
|                                | § | <b>Joint Administration Requested</b> |

**DECLARATION OF DEAN SWICK IN SUPPORT OF THE DEBTORS’ APPLICATION  
PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER 11 U.S.C. §§ 327(a)  
AND 328 AUTHORIZING THE RETENTION AND EMPLOYMENT OF ALVAREZ &  
MARSAL, LLC AS FINANCIAL AND RESTRUCTURING ADVISORS**

Dean Swick makes this declaration (this “**Declaration**”) under 28 U.S.C. § 1746, and states:

1. I am a Managing Director with Alvarez & Marsal North America, LLC together with employees of its affiliates (all of which are wholly-owned by its parent company and employees), its wholly owned subsidiaries, and independent contractors, “**Alvarez & Marsal**”), a financial and restructuring advisory services firm with numerous offices throughout the country. I submit this Declaration on behalf of Alvarez & Marsal in support of the Debtors’ Application to Employ And Retain Alvarez & Marsal as Financial and Restructuring Advisors to Debtors And Debtors in Possession Pursuant to Sections 327(a) and 328 of the Bankruptcy Code (the “**Application**”) on the terms and conditions set forth in the Application and the engagement letter between the Debtors and Alvarez & Marsal attached to the Application as Exhibit C (the “**Engagement Letter**”). Except as otherwise noted,<sup>1</sup> I have personal knowledge of the matters set forth herein.

<sup>1</sup> Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at Alvarez & Marsal and are based on information provided by them.

**Alvarez & Marsal's Disinterestedness**

2. Alvarez & Marsal together with its affiliates (the "**Firm**") utilize certain procedures ("**Firm Procedures**") to determine the Firm's relationships, if any, to parties that may have a connection to a client debtor. In implementing the Firm Procedures, the following actions were taken to identify parties that may have connections to the Debtors, and the Firm's relationship with such parties:

- a. Alvarez & Marsal requested and obtained from the Debtors' extensive lists of interested parties and significant creditors (the "**Potential Parties In Interest**").<sup>2</sup> The Potential Parties In Interest reviewed include, among others, (i) the Debtors and their nondebtor affiliates as identified to Alvarez & Marsal by the Debtors; (ii) the Debtors' directors and senior officers and control persons, as provided to Alvarez & Marsal by the Debtors; (iii) the Debtors' significant secured lenders, as identified to Alvarez & Marsal by the Debtors; (iv) the Debtors' twenty largest unsecured creditors; (v) the attorneys and other professionals that have been retained by the Debtors in these chapter 11 cases.
- b. Alvarez & Marsal then compared the names of each of the Potential Parties In Interest to the names in its master electronic database of the Firm's current and recent clients (the "**Client Database**"). The Client Database generally includes the name of each client of the Firm, the name of each party who is or was known to be adverse to the client of the Firm in connection with the matter in which the Firm is representing such client, the name of each party that has, or had, a substantial role with regard to the subject matter of the Firm's retention, and the names of the Firm professionals who are, or were, primarily responsible for matters for such clients.
- c. An email was issued to all Firm professionals requesting disclosure of information regarding: (i) any known personal connections between the respondent and/or the Firm on the one hand, and either the Potential Parties In Interest or the Debtors, on the other hand,<sup>3</sup> (ii) any known connections or

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<sup>2</sup> The list of Potential Parties In Interest is expected to be updated during these cases. Alvarez & Marsal continues to review the relationships its attorneys may have with potentially interested parties and to determine whether any relationships other than those set forth herein exist. As may be necessary, Alvarez & Marsal will supplement this Declaration if it becomes aware of a relationship that may adversely affect Alvarez & Marsal's retention in these cases or discovers additional parties in interest through the filing of statements of financial affairs or statements under Bankruptcy Rule 2019. Alvarez & Marsal will update this disclosure if it is advised of any trading of claims against or interests in the Debtors that may relate to Alvarez & Marsal's retention or otherwise requires such disclosure.

<sup>3</sup> In reviewing its records and the relationships of its professionals, Alvarez & Marsal did not seek information as to whether any Alvarez & Marsal professional or member of his/her immediate family: (a) indirectly owns, through a

representations by the respondent and/or the Firm of any of the Potential Parties In Interest in matters relating to the Debtors; and (iii) any other conflict or reason why Alvarez & Marsal may be unable to represent the Debtors.

d. Known connections between former or recent clients of the Firm and the Potential Parties In Interest were compiled for purposes of preparing this Declaration. These connections are listed in Schedule A annexed hereto.

3. As a result of the Firm Procedures, I have thus far ascertained that, except as may be set forth herein, upon information and belief, if retained, Alvarez & Marsal:

- a. is not a creditor of the Debtors (including by reason of unpaid fees for prepetition services), an equity security holder of the Debtors, or an “insider” of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code;
- b. is not, and has not been, within 2 years before the date of the filing of the petition, a director, officer, or employee of the Debtors; and
- c. does not have an interest materially adverse to the interests of the Debtors’ estates, or of 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.

4. As can be expected with respect to any international professional services firm such as Alvarez & Marsal, the Firm provides services to many clients with interests in the Debtors’ chapter 11 cases. To the best of my knowledge, except as indicated below, the Firm’s services for such clients do not relate to the Debtors’ chapter 11 cases.

5. In the course of its review, Alvarez & Marsal learned that the Firm maintains a relationship with certain parties in interest that may relate to the Debtors’ cases (the “**Related Parties In Interest**”). Certain employees of Alvarez & Marsal maintain relationships as advisors to or interim officers of Lehman Brothers Holdings Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, “**Lehman**”). Lehman is a participant in the

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public mutual fund or through partnerships in which certain Alvarez & Marsal professionals have invested but as to which such professionals have no control over or knowledge of investment decisions, securities of the Debtors or any other party in interest; or (b) has engaged in any ordinary course consumer transaction with any party in interest. If any such relationship does exist, I do not believe it would impact Alvarez & Marsal’s disinterestedness or otherwise give rise to a finding that Alvarez & Marsal holds or represents an interest adverse to the Debtors’ estates.

Debtors' revolving debt facility. Lehman's interest represents less than 0.5% of the Debtors' total outstanding senior secured debt. Alvarez & Marsal will recuse itself from directly assisting or advising Lehman with respect to the negotiation, settlement, remediation or adjudication of any matters, claims or disputes between the Debtors and Lehman. No Alvarez & Marsal personnel providing services to Lehman shall provide services to the Debtors. To the best of my knowledge, the Firm's preexisting relationship with Lehman will not pose a conflict to the Debtors' retention of Alvarez & Marsal.

6. Further, as part of its diverse practice, the Firm appears in numerous cases and proceedings, and participates in transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who represent claimants and other interested parties in the Debtors' chapter 11 cases. Further, the Firm has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of whom may be involved in these proceedings. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these relationships create interests materially adverse to the Debtors in matters upon which Alvarez & Marsal is to be employed, and none are in connection with these cases.

7. To the best of my knowledge, no employee of the Firm is a relative of, or has been connected with the United States Trustee (the "**U.S. Trustee**") in this district or its employees.

8. Accordingly, to the best of my knowledge, Alvarez & Marsal is a "disinterested person" as that term is defined in section 101(14) of title 11 of the United States Code (the "**Bankruptcy Code**"), in that Alvarez & Marsal: (i) is not a creditor, equity security

holder, or insider of the Debtors; (ii) was not, within two years before the date of filing of the Debtors' chapter 11 petitions, a director, officer, or employee of the Debtors; and (iii) does not have an interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders. If any new material relevant facts or relationships are discovered or arise, Alvarez & Marsal will promptly file a supplemental declaration.

### Compensation

9. Alvarez & Marsal received \$100,000 as a retainer in connection with preparing for and conducting the filing of these Chapter 11 cases, as described in the Engagement Letter. In the 90 days prior to the Commencement Date, Alvarez & Marsal received retainers and payments totaling \$1,089,237.37 in the aggregate for services performed for the Debtors. Alvarez & Marsal has applied these funds to amounts due for services rendered and expenses incurred prior to the Commencement Date. A precise disclosure of the amounts or credits held, if any, as of the Commencement Date will be provided in Alvarez & Marsal's first interim fee application for postpetition services and expenses to be rendered or incurred for or on behalf of the Debtors. The unapplied residual retainer, which is estimated to total approximately \$110,000, will not be segregated by Alvarez & Marsal in a separate account, and will be held until the end of these chapter 11 cases and applied to Alvarez & Marsal's final approved fees in these proceedings.

10. Subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, applicable U.S. Trustee guidelines, and the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"). Alvarez & Marsal will seek from the Debtors payment for compensation on an hourly basis and reimbursement of actual and necessary expenses incurred by Alvarez & Marsal. Alvarez & Marsal's customary hourly rates as charged in bankruptcy and non-bankruptcy

matters of this type by the professionals assigned to this engagement are outlined in the Application. These hourly rates are adjusted annually.

11. To the best of my knowledge, (i) no commitments have been made or received by Alvarez & Marsal with respect to compensation or payment in connection with these cases other than in accordance with applicable provisions of chapter 11 of Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Bankruptcy Local Rules and (ii) Alvarez & Marsal has no agreement with any other entity to share with such entity any compensation received by Alvarez & Marsal in connection with these chapter 11 cases.

12. By reason of the foregoing, I believe Alvarez & Marsal is eligible for employment and retention by the Debtors pursuant to sections 327(a) (as modified by sections 1107(b)), 328, 330 and 331 of the Bankruptcy Code and the applicable Bankruptcy Rules and Bankruptcy Local Rules.

I declare under penalty of perjury that, to the best of my knowledge, and after reasonable inquiry, the foregoing is true and correct.

Executed this 27th day of October, 2009.

/s/ Dean Swick  
Dean Swick  
Managing Director

**SCHEDULE A**

**DISCLOSURE EXHIBIT**

**DISCLOSURE EXHIBIT**

**Creditors**<sup>1</sup>

ACE American Insurance Co.  
AIG  
Akin Gump Strauss Hauer & Feld  
Allied Irish Bank  
American Money Management  
AMMC CLO III Limited  
Apollo  
Barclays Bank PLC  
BJ Services  
Centerpoint Energy  
CIT Bank  
Credit Suisse  
CSAM  
Deerfield Capital  
Deutsche Asset Management/Scudder  
Flagship CLO III  
Guggenheim  
Gulf Stream Asset Management  
John Hancock Trust Floating Rate Income  
JPMorgan Chase Bank  
Katonah III, Ltd  
Laminar Direct Capital  
MJX Asset Management  
Muzinich and Company  
Navigare Funding I CLO Ltd.  
Orix Business Credit  
Pioneer Floating Rate Fund  
Race Point IV CLO Ltd.  
Sankaty Advisors Inc.  
Sierra CLO II Ltd  
Stanfield Capital Partners  
Stanwich Loan Funding LLC  
Verizon Southwest  
Western Asset Management

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<sup>1</sup> A&M is currently advising or has previously advised these parties or their affiliates as creditors or various official creditors' committees in which these parties or their affiliates were members or which represented the interests of these parties or their affiliates.

**Members of Noteholders Group**<sup>2</sup>

Cerberus Series Four Holdings LLC  
Credit Suisse  
Guggenheim  
JPMorgan Chase Bank

**Professionals & Advisors**<sup>3</sup>

Akin Gump Strauss Hauer & Feld  
Aon Premium Credit LLC  
Weil, Gotshal & Manges LLP<sup>4</sup>

**Clients of A&M and/or its Affiliates**<sup>5</sup>

ACE American Insurance Co.  
AIG  
Air Liquide Industrial U.S. LP  
Allied Irish Bank  
Apache Corp.  
Apollo  
Audax  
Baker Hughes Inc.  
Centerpoint Energy  
Cerberus Series Four Holdings LLC  
CIT Bank  
Comcast  
Complete Production Services  
Copper River CLO LTD  
Credit Suisse  
Deutsche Asset Management/Scudder  
Devon Energy  
EnCana  
Entergy Energy Services  
Exxon Mobil  
Guggenheim

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<sup>2</sup> A&M is currently advising or has previously advised various official or unofficial noteholders' committees in which these parties or their affiliates were members or which represented the interests of these parties or their affiliates.

<sup>3</sup> These professionals have represented clients in matters where A&M was also an advisor (or provided crisis management) to the same client. In certain cases, these professionals may have engaged A&M on behalf of such client.

<sup>4</sup> These professionals represent A&M and/or an affiliate on wholly unrelated matters.

<sup>5</sup> A & M and/ or an affiliate is currently providing or has previously provided certain consulting services to these parties or their affiliates in wholly unrelated matters.

Gulf Stream Asset Management  
John Hancock Trust Floating Rate Income  
JPMorgan Chase Bank  
Key Energy Services  
Laminar Direct Capital  
Lehman Brothers Inc.  
Mariner Energy Inc.  
McMoRan Exploration Co.  
Merit Energy Company  
National Union Fire Insurance Company  
Oil States International, Inc.  
Orix Business Credit  
OXY/Occidental Petroleum Corporation  
Petrohawk Energy  
Reliant Energy  
Sankaty Advisors Inc.  
Schlumberger Ltd.  
Solus Alternative Asset Management  
Stanfield Capital Partners  
Stanwich Loan Funding LLC  
TXU Energy  
Underwriters at Lloyds  
Verizon Southwest  
Weil, Gotshal & Manges LLP  
XTO Energy Inc.

**Significant Equity Holders**<sup>6</sup>

ACE American Insurance Co.  
AIG  
Apollo  
Audax  
Barclays Bank PLC  
Cerberus Series Four Holdings LLC  
Chatham Light II CLO Ltd.  
CIT Bank  
Credit Suisse  
Devon Energy  
DWS Floating Rate Plus Fnd  
Guggenheim  
JPMorgan Chase Bank  
Kinder Morgan

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<sup>6</sup> These parties or their affiliates are significant equity holders of other clients of A&M or its affiliates in wholly unrelated matters.

National Oilwell Varco, L.P.  
Pequot Special Opportunities Fund III, LP  
Sankaty Advisors Inc.  
Silver Lake Credit Fund LP  
Stanfield Capital Partners  
Verizon Southwest

**Significant Joint Venture Partners**<sup>7</sup>

Barclays Bank PLC  
Deutsche Asset Management/Scudder  
JPMorgan Chase Bank

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<sup>7</sup> These parties or their affiliates are significant joint venture partners of other clients of A&M or its affiliates in wholly unrelated matters.

**EXHIBIT C**

**ENGAGEMENT LETTER**



700 Louisiana Street, Suite 900  
Houston, TX 77002  
Phone: (713) 571-2400  
Fax: (713) 547-3697  
[www.alvarezandmarsal.com](http://www.alvarezandmarsal.com)

June 2, 2009

Darron Anderson  
President and Chief Executive Officer  
Express Energy Services  
3200 Southwest Fwy # 2000  
Houston, TX, 77027

Dear Mr. Anderson:

This letter confirms and sets forth the terms and conditions of the engagement between Alvarez & Marsal North America, LLC (“A&M”) and Express Energy Services ( the “Company”), including the scope of the services to be performed and the basis of compensation for those services. Upon execution of this letter by each of the parties below and receipt of the retainer described below, this letter will constitute an agreement between the Company and A&M.

1. Description of Services

- (a) A&M shall provide consulting services to the Company’s Chief Executive Officer and Board of Directors. It is anticipated that A&M’s activities shall include the following:
  - (i) assist in the development of 13-week cash receipts and cash disbursements forecasts, budget to actual variances and short and long term business plans and financial forecasts, including the identification of opportunities to improve financial and operational performance as may come to our attention
  - (ii) assist in the development of liquidation analysis;
  - (iii) assist in the preparation for a chapter 11 filing, should it become prudent or necessary to do so;
  - (iv) assist in the discussion and negotiations with creditors as requested; and



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- (v) other activities as are approved by you or the Board of Directors and agreed to by A&M.

You understand that the services to be rendered by A&M may include the preparation of projections and other forward-looking statements, and numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections. In addition, A&M will be relying on information provided by the Company in the preparation of those projections and other forward-looking statements. A&M makes no representation or guarantee that an appropriate restructuring proposal can be formulated for the Company, that restructuring is the best course of action for the Company or, if formulated, that any proposed restructuring plan will be accepted by the Company's creditors, shareholders and other constituents. Further, A&M assumes no responsibility for the implementation or selection of any restructuring proposal which it assists the Company in formulating.

In rendering its services to the Company, A&M will report directly to the Board of Directors and Chief Executive Officer and will make recommendations to and consult with the Board of Directors and such senior officers as the Board directs.

(b) Dean Swick, a Managing Director of A&M, will be responsible for the overall engagement. He will be assisted by Todd Matherne, a Senior Director and other A&M personnel. In connection with the services to be provided hereunder, from time to time A&M may utilize the services of employees of its affiliates. Such affiliates are wholly owned by A&M's parent company and employees.

A&M personnel providing services to the Company may also work with other A&M clients in conjunction with unrelated matters.

2. Compensation

- (a) A&M will receive fees based on the following hourly rates:

|                    |               |
|--------------------|---------------|
| Managing Directors | \$625 - \$850 |
| Directors          | \$450 - \$625 |
| Associates         | \$300 - \$450 |
| Analysts           | \$225 - \$300 |



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Such rates shall be subject to adjustment annually at such time as A&M adjusts its rates generally.

- (b) In addition, A&M will be reimbursed for its reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging, duplicating, computer research, messenger and telephone charges. In addition, A&M shall be reimbursed for the reasonable fees and expenses of its counsel incurred in connection with the preparation, negotiation and enforcement of this Agreement. All fees and expenses will be billed and payable on a monthly basis or, at A&M's discretion, more frequently. A&M will inform the Company when and if our aggregate expenses exceed \$50,000.
- (c) The Company shall promptly remit to A&M a retainer in the amount of \$100,000, which shall be credited against any amounts due at the termination of this engagement and returned upon the satisfaction of all obligations hereunder.
- (d) The Company and A&M recognize that it may be appropriate for A&M to receive incentive compensation for its services hereunder, in addition to the compensation set forth above. Any such incentive compensation would be based on mutually acceptable parameters that may be developed over the course of the engagement.

### 3. Term

The engagement will commence as of the date hereof and may be terminated by either party without cause by giving 30 days' written notice to the other party. A&M normally does not withdraw from an engagement unless the Company misrepresents or fails to disclose material facts, fails to pay fees or expenses, or makes it unethical or unreasonably difficult for A&M to continue to represent the Company, or unless other just cause exists. In the event of any such termination, any fees and expenses due to A&M shall be remitted promptly (including fees and expenses that accrued prior to but were invoiced subsequent to such termination). If the Company terminates this engagement without Cause or if A&M terminates this engagement for Good Reason, A&M shall also be entitled to receive the Incentive Fee upon the occurrence of the event specified in Section 2(d) if such event occurs within 12 months of the termination. The Company may immediately terminate A&M's services hereunder at any time for Cause by giving



written notice to A&M. Upon any such termination, the Company shall be relieved of all of its payment obligations under this Agreement, except for the payment of fees and expenses through the effective date of termination (including fees and expenses that accrued prior to but were invoiced subsequent to such termination) and its obligations under paragraphs 7 and 8. For purposes of this Agreement, "Cause" shall mean if A&M breaches any of its material obligations hereunder and does not cure such breach within 30 days of the Company having given written notice of such breach to A&M describing in reasonable detail the nature of the alleged breach. A&M shall be entitled to immediately terminate its services hereunder for Good Reason. For purposes of this Agreement, termination for "Good Reason" shall mean either its resignation caused by a breach by the Company of any of its material obligations under this Agreement that is not cured within 30 days of A&M having given written notice of such breach to the Company describing in reasonable detail the nature of the alleged breach or a filing of a petition under Chapter 11 of the United States Bankruptcy Code in respect of the Company unless within 45 days thereafter (or, if sooner, prior to the date on which a plan of reorganization is confirmed or the case is converted to one under Chapter 7), the Company has obtained judicial authorization to continue the engagement on the terms herein pursuant to an order which has become a final, nonappealable order

4. Relationship of the Parties

The parties intend that an independent contractor relationship will be created by this engagement letter. Neither A&M nor any of its personnel or subcontractors is to be considered an employee or agent of the Company and the personnel and subcontractors of A&M are not entitled to any of the benefits that the Company provides for the Company employees. The Company acknowledges that A&M's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the AICPA, SEC or other state or national professional or regulatory body.

5. No Third Party Beneficiary

The Company acknowledges that all advice (written or oral) given by A&M to the Company in connection with this engagement is intended solely for the benefit and use of the Company (limited to its Board of Directors and management) in considering the matters to which this engagement relates. The Company agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks referred to herein without A&M's prior approval (which shall not be unreasonably withheld), except as required by law.



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6. Conflicts

A&M is not currently aware of any relationship that would create a conflict of interest with the Company or those parties-in-interest of which you have made us aware. Because A&M is a consulting firm that serves clients on a national basis in numerous cases, both in and out of court, it is possible that A&M may have rendered or will render services to or have business associations with other entities or people which had or have or may have relationships with the Company, including creditors of the Company. In the event you accept the terms of this engagement, A&M will not represent, and A&M has not represented, the interests of any such entities or people in connection with this matter.

7. Confidentiality / Non-Solicitation

A&M shall keep as confidential all non-public information received from the Company in conjunction with this engagement, except: (i) as requested by the Company or its legal counsel; (ii) as required by legal proceedings or (iii) as reasonably required in the performance of this engagement. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is or becomes public other than as a result of a breach of this provision. Except as specifically provided for in this letter, until two (2) years subsequent to the date hereof, the Company and its subsidiaries, and the Capital Advisors division within Macquarie Capital (USA) Inc. (the Company and such divisions, collectively, the "Covered Party"), will not directly or indirectly solicit, recruit, hire or otherwise engage any employee of A&M who worked on this engagement while employed by A&M ("Solicited Person") and no employee of Macquarie Capital (USA) Inc. that worked with A&M on this engagement will refer any Solicited Person to any affiliate of a Covered Party for employment or engagement or direct that such Solicited Person be so employed or engaged by any such affiliate; provided however that this restriction shall not apply with respect to any general solicitation for new employees which is not targeted at the Solicited Person. Should the prior sentence be violated and should the related Solicited Person accept any related offer of employment or engagement A&M shall be entitled to a fee from the party extending such offer equal to the Solicited Person's hourly client billing rate at the time of the offer multiplied by 4,000 hours for a Managing Director, 3,000 hours for a Senior Director and 2,000 hours for any other A&M employee. The fee shall be payable at the time of the Solicited Person's acceptance of employment or engagement.



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8. Indemnification

The attached indemnification agreement is incorporated herein by reference and shall be executed upon the acceptance of this Agreement. Termination of this engagement shall not affect these indemnification provisions, which shall remain in full force and effect.

9. Miscellaneous

This engagement letter (together with the attached indemnity provisions): (a) shall be governed and construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof; (b) incorporates the entire understanding of the parties with respect to the subject matter hereof; and (c) may not be amended or modified except in writing executed by both parties hereto. The Company and A&M agree to waive trial by jury in any action, proceeding or counterclaim brought by or on behalf of the parties hereto with respect to any matter relating to or arising out of the engagement or the performance or non-performance of A&M hereunder. The Company and A&M agree, to the extent permitted by applicable law, that any Federal Court sitting within the Southern District of New York shall have exclusive jurisdiction over any litigation arising out of this Agreement; to submit to the personal jurisdiction of the Courts of the United States District Court for the Southern District of New York; and to waive any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the State of New York for any litigation arising in connection with this Agreement. In the event the Company files under Chapter 11, the Company and A&M agree that the bankruptcy court shall have jurisdiction over any and all matters arising under or in connection with this engagement letter and the indemnity provisions in connection with the services rendered by A&M hereunder. Notwithstanding anything herein to the contrary, A&M may reference or list the Company's name and/or a general description of the services in A&M's marketing materials, including, without limitation, on A&M's website.




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If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.


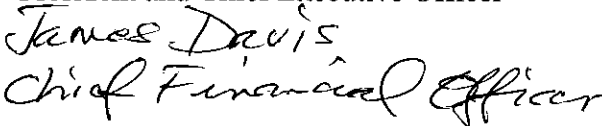
Very truly yours,

Alvarez & Marsal North America, LLC

By:   
Dean Swick  
Title: Managing Director

Accepted and agreed:

Express Energy Services

By:   
Darron Anderson  
President and Chief Executive Officer  
  
James Davis  
Chief Financial Officer

## INDEMNIFICATION AGREEMENT

This indemnity is made part of an agreement, dated June 2, 2009 (which together with any renewals, modifications or extensions thereof, is herein referred to as the "Agreement") by and between Alvarez & Marsal North America, LLC ("A&M") and Express Energy Services (the "Company"), for services to be rendered to the Company by A&M.

A. The Company agrees to indemnify and hold harmless each of A&M, its affiliates and their respective shareholders, members, managers, employees, agents, representatives and subcontractors (each, an "Indemnified Party" and collectively, the "Indemnified Parties") against any and all losses, claims, damages, liabilities, penalties, obligations and reasonable and documented expenses, including the costs for counsel or others (including employees of A&M, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing the Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' acceptance of or the performance or nonperformance of their obligations under the Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Party's gross negligence or willful misconduct. The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with the engagement of A&M, except to the extent that any such liability for losses, claims, damages, liabilities or expenses are found in a final judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Party's gross negligence or willful misconduct. The Company further agrees that it will not, without the prior consent of an Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which such Indemnified Party seeks indemnification hereunder (whether or not such Indemnified Party is an actual party to such claim, action, suit or proceedings) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding.

B. These indemnification provisions shall be in addition to any liability which the Company may otherwise have to the Indemnified Parties. In the event that, at any time whether before or after termination of the engagement or the Agreement, as a result of or in connection with the Agreement or A&M's and its personnel's role under the Agreement, A&M or any Indemnified Party is required to produce any of its personnel (including former employees) for examination, deposition or other written, recorded or oral presentation, or A&M or any of its personnel (including former employees) or any other Indemnified Party is required to produce or otherwise review, compile, submit, duplicate, search for, organize or report on any material within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the Company will reimburse the Indemnified Party for its out of pocket expenses, including the reasonable and documented fees and expenses of its counsel, and will

compensate the Indemnified Party for the time expended by its personnel based on such personnel's then current hourly rate.

C. If any action, proceeding or investigation is commenced to which any Indemnified Party proposes to demand indemnification hereunder, such Indemnified Party will notify the Company with reasonable promptness; provided, however, that any failure by such Indemnified Party to notify the Company will not relieve the Company from its obligations hereunder, except to the extent that such failure shall have actually prejudiced the defense of such action. The Company shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under the Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. With respect to any particular matter Company shall only be obligated to advance expenses for one counsel/firm for all Indemnified Parties in any specific jurisdiction rather than separate counsel for each Indemnified Party unless it is determined by any such counsel that due to the existence of actual or potential conflicts of interest between the Indemnified Parties a single counsel is unable to represent all Indemnified Parties. Each Indemnified Party hereby undertakes, and the Company hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which an Indemnified Party is a party is also against the Company, the Company may, in lieu of advancing the expenses of separate counsel for such Indemnified Party, provide such Indemnified Party with legal representation by the same counsel who represents the Company, provided such counsel is reasonably satisfactory to such Indemnified Party, at no cost to such Indemnified Party; provided, however, that if such counsel or counsel to the Indemnified Party shall determine that due to the existence of actual or potential conflicts of interest between such Indemnified Party and the Company such counsel is unable to represent both the Indemnified Party and the Company, then the Indemnified Party shall be entitled to use separate counsel of its own choice, and the Company shall promptly advance its reasonable expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent an Indemnified Party from using separate counsel of its own choice at its own expense. The Company will be liable for any settlement of any claim against an Indemnified Party made with the Company's written consent, which consent shall not be unreasonably withheld.

D. In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the relative fault of the Company, on the one hand, and the Indemnified Parties, on the other hand, in connection with the statements, acts or omissions which resulted in the losses, claims, damages, liabilities and costs giving rise to the indemnification claim and other relevant equitable considerations shall be considered; and further provided that in no event will the Indemnified Parties' aggregate contribution for all losses, claims, damages, liabilities and

expenses with respect to which contribution is available hereunder exceed the amount of fees actually received by the Indemnified Parties pursuant to the Agreement. No person found liable for a fraudulent misrepresentation shall be entitled to contribution hereunder from any person who is not also found liable for such fraudulent misrepresentation.


E. In the event the Company and A&M seek judicial approval for the assumption of the Agreement or authorization to enter into a new engagement agreement pursuant to either of which A&M would continue to be engaged by the Company, the Company shall promptly pay reasonable and documented expenses incurred by the Indemnified Parties, including attorneys' fees and expenses, in connection with any motion, action or claim made either in support of or in opposition to any such retention or authorization, whether in advance of or following any judicial disposition of such motion, action or claim, promptly upon submission of invoices therefor and regardless of whether such retention or authorization is approved by any court. The Company will also promptly pay the Indemnified Parties for any expenses reasonably incurred by them, including attorneys' fees and expenses, in seeking payment of all amounts owed it under the Agreement (or any new engagement agreement) whether through submission of a fee application or in any other manner, without offset, recoupment or counterclaim, whether as a secured claim, an administrative expense claim, an unsecured claim, a prepetition claim or a postpetition claim.


F. Neither termination of the Agreement nor termination of A&M's engagement nor the filing of a petition under Chapter 7 or 11 of the United States Bankruptcy Code (nor the conversion of an existing case to one under a different chapter) shall affect these indemnification provisions, which shall hereafter remain operative and in full force and effect.

G. The rights provided herein shall not be deemed exclusive of any other rights to which the Indemnified Parties may be entitled under the certificate of incorporation or bylaws of the Company, any other agreements, any vote of stockholders or disinterested directors of the Company, any applicable law or otherwise.

EXPRESS ENERGY SERVICES

ALVAREZ & MARSAL NORTH AMERICA,  
LLC

By:   
~~Darron Anderson~~  
~~President and Chief Executive Officer~~  
James DAVIS,  
Chief Financial  
Officer

By:   
Dean Swick  
Managing Director

## **EXHIBIT D**

### **DISPUTE RESOLUTION PROCEDURES**

The following procedures shall be used to resolve any controversy or claim (“**Dispute**”) as provided in this Agreement. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

#### **Mediation**

A dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator will be designated by the American Arbitration Association (“**AAA**”) or JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all parties.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

#### **Arbitration**

If a dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration and judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof. The arbitration will be conducted in accordance with the procedures in this document and the Arbitration Rules for Professional Accounting and Related Services Disputes of the AAA (“**AAA Rules**”).

**EXHIBIT E**

**PROPOSED ORDER**

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

|   |  |                                |
|---|--|--------------------------------|
| In re   | §  | Chapter 11                     |
| EXPRESS ENERGY SERVICES<br>OPERATING, LP, <i>et al.</i> , | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | Case No. 09-____ (____)        |
| Debtors.  | §  | Joint Administration Requested |

**ORDER GRANTING DEBTORS' APPLICATION TO RETAIN ALVAREZ & MARSAL NORTH AMERICA, LLC AS FINANCIAL AND RESTRUCTURING ADVISORS NUNC PRO TUNC TO THE COMMENCEMENT DATE**

**[Related to Docket No. ]**

Upon the Application (the "**Application**"),<sup>1</sup> of Express Energy Services Operating, LP ("**EES**") and its and its affiliated debtors in the above referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), for an order, pursuant to sections 327 and 328 of the Bankruptcy Code authorizing the retention of Alvarez and Marsal North America, LLC ("**Alvarez & Marsal**") as financial and restructuring advisors to the Debtors *nunc pro tunc* to the Commencement Date, all as more fully set forth in the Application; and upon consideration of the Declaration of Dean Swick, a Managing Director at Alvarez & Marsal, dated October 27, 2009 (the "**Swick Declaration**"); and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the requested relief being a core proceeding the Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application and the hearing

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

thereon has been given under the circumstances and that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is ORDERED that

1. The Application is GRANTED nunc pro tunc to the Commencement Date to the extent provided herein.

2. Pursuant to sections 327(a) and 328 of the Bankruptcy Code, the Debtors are authorized to employ and retain Alvarez & Marsal as financial and restructuring advisors on the terms set forth in the Application, including the Engagement Letter attached thereto and indemnification agreement included in the Engagement Letter.

3. Alvarez & Marsal shall be compensated by the Debtors in accordance with the procedures set forth in sections forth in sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, and any applicable orders of the Court, including any procedures for interim compensation and reimbursement of expenses to professionals.

4. To the extent there is inconsistency between the terms of the Engagement Letter, the Application, and this Order, the terms of this Order shall govern.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: Houston, Texas  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE