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PROPOSED ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al., ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Joint Administration Requested

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING DEBTORS TO PAY PREPETITION SALES/USE TAXES AND
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS PURSUANT TO SECTIONS 105(a), 363(b),
507(a)(8), AND 541(d) OF THE BANKRUPTCY CODE**

Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the "Debtors") hereby file this *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to Pay Prepetition Sales/Use Taxes and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers Pursuant to Sections 105(a), 363(b), 507(a)(8), and 541(d) of the*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.



Bankruptcy Code (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On June 9, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Motion and the Debtors’ Chapter 11 Cases are set forth in greater detail in the *Declaration of Kristin Whitley in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* and the *Declaration of Gary Barton in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (collectively, the “First Day Declarations”), which were filed on

the Petition Date and are incorporated by reference in this Motion.

5. In the ordinary course of their businesses, the Debtors collect, remit, withhold, and pay to various taxing authorities and governmental regulatory bodies (collectively, the “Taxing Authorities”) among other taxes, certain sales and use taxes (the “Sales/Use Taxes”). A non-exclusive list of the Taxing Authorities for Sales/Use Taxes is annexed as **Exhibit 1** (the “Taxing Authorities List”) to the proposed order.

6. The Taxing Authorities require the Debtors to collect from their customers, and/or for the Debtors to pay as a customer, Sales/Use Taxes that are based on a percentage of sales prices. In most cases, the Sales/Use Taxes are paid in arrears once collected. The Debtors request authority to continue their ordinary business practices of invoicing and paying invoices that account for the applicable Sales/Use Taxes, whether such invoices are prepetition or postpetition invoices. The Debtors estimate that they owe approximately **\$10,000** in Sales/Use Taxes relating to periods prior to the Petition Date, all of which will become due within thirty days of the Petition Date.

7. The amount of Sales/Use Taxes above is a good faith estimate based on the Debtors’ books and records and remains subject to potential audits and other adjustments. As such, the Debtors also seek authorization to pay any prepetition Sales/Use Taxes due and owing following audit and review.

Relief Requested

8. The Debtors request, pursuant to sections 105(a), 363(b), 507(a)(8), and 541(d) of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) the authority, but not direction, to pay pre-petition Sales/Use Taxes due and owing to various Taxing Authorities, including any Sales/Use Taxes determined owing

postpetition for the period prior to the Petition Date, and (ii) that the Court authorize applicable banks and financial institutions (collectively, the “Banks”) to receive, honor, process, and pay all checks issued or to be issued and electronic funds transfers requested or to be requested relating to the above.

9. A proposed form of order approving the relief requested herein is annexed hereto as **Exhibit A** (the “Proposed Order”). Although the Taxing Authorities List attached as **Exhibit 1** to the Proposed Order is substantially complete, the relief requested herein is to be applicable with respect to all Taxing Authorities for Sales/Use Taxes and is not limited to those Taxing Authorities listed on the Taxing Authorities List.

Basis for Relief Requested

10. Ample cause exists to authorize the payment of the prepetition Sales/Use Taxes, including, among other things, that (i) the failure to pay the prepetition Sales/Use Taxes may interfere with the Debtors’ successful reorganization efforts; (ii) funds representing certain of the unremitted prepetition Sales/Use Taxes may not be property of the Debtors’ estates; (iii) the payment of prepetition Sales/Use Taxes affects only the timing of payments as most, if not all, of the Sales/Use Taxes are afforded priority or secured status under the Bankruptcy Code; and (iv) the Court has authority to grant the requested relief under Sections 105(a) and 363(b) of the Bankruptcy Code, and payment of the prepetition Sales/Use Taxes is a valid exercise of the Debtors’ fiduciary duties pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

A. Failure to Pay the Prepetition Sales/Use Taxes May Interfere with the Debtors’ Reorganization Efforts

11. The Debtors seek to obtain authority to pay the prepetition Sales/Use Taxes to avoid interference with the Debtors’ efforts to successfully reorganize. Nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to,

asserting liens, preventing the Debtors from conducting business in the applicable jurisdictions, or seeking to lift the automatic stay, which potentially impose significant costs on the Debtors' estates. Failure to satisfy the prepetition Sales/Use Taxes may jeopardize the Debtors' maintenance of good standing to operate in the jurisdictions in which they do business.

12. To the extent that any prepetition Sales/Use Taxes remain unpaid by the Debtors, certain of the Debtors' officers and directors may be subject to lawsuits or criminal prosecution during the pendency of these Chapter 11 Cases. The dedicated and active participation of the Debtors' directors, officers, and other employees is essential to the orderly administration of these Chapter 11 Cases. The threat of a lawsuit or criminal prosecution, and any ensuing liability, would distract the Debtors and their personnel from important tasks, to the detriment of all parties in interest.

B. The Funds Representing Prepetition Sales/Use Taxes May Not Be Property of the Debtors' Estates

13. The Debtors submit that funds representing the Sales/Use Taxes may constitute "trust fund" taxes, which the Debtors are required to collect and/or hold in trust for payment to the Taxing Authorities. Section 541(d) of the Bankruptcy Code provides, in relevant part:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

14. To the extent the Debtors have collected or hold taxes in trust for payment to the Taxing Authorities, such funds may not constitute property of the Debtors' estates. *See, e.g., Begier v. IRS*, 496 U.S. 53, 60-62 (1990) (holding that excise and withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate); *Al*

Copeland Enters., Inc. v. Texas, 991 F.2d 233, 235 (5th Cir. 1993) (stating that a debtor holds state sales tax revenues in trust for the state); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims.”); *Tex. Comptroller of Pub. Accts. v. Megafoods Stores, Inc. (In re Megafoods Stores, Inc.)*, 163 F.3d 1063, 1067-68 (9th Cir. 1988) (under Texas law, state sales taxes collected created statutory trust fund, if traceable, and were not property of the estate). The Debtors, therefore, generally do not have an equitable interest in such funds, and they should be permitted to pay those funds to the Taxing Authorities as they become due.

C. Paying the Prepetition Sales/Use Taxes Will Affect Only the Timing of Payments

15. Moreover, most, if not all, of the Sales/Use Taxes described herein are afforded priority status pursuant to Section 507(a)(8) of the Bankruptcy Code. *See* § 507(a)(8)(A). Courts have authorized early payment of priority claims when such early payment is intended to prevent some harm or to procure some benefit for the estate. *See, e.g., In re CEI Roofing, Inc.*, 315 B.R. 50, 60-61 (Bankr. N.D. Tex. 2004) (finding that authorization of early payment of priority claims does not trigger concerns of either upsetting priority scheme of Bankruptcy Code or of unfair discrimination); *In re CoServ, L.L.C.*, 273 B.R. 487, 493 (Bankr. N.D. Tex. 2002) (implying that bankruptcy court may authorize early payment of prepetition priority claims in instances where nonpayment could impair debtor’s ability to operate); *Equalnet Commc’ns Corp.*, 258 B.R. at 370. (stating that court may authorize pre-plan payment of priority claims, because “the need to pay these claims in an ordinary course of business time frame is simple common sense”).

16. To the extent the prepetition Sales/Use Taxes are priority claims, they must be paid in full before any general unsecured obligations of the Debtors may be satisfied. The Debtors submit that sufficient assets exist to pay certain of the prepetition Sales/Use Taxes. Accordingly, the proposed relief will affect only the timing of payment of the prepetition

Sales/Use Taxes and will not prejudice the rights of any general unsecured creditor or other party in interest. The Court, therefore, should grant the Debtors authority to pay the prepetition Sales/Use Taxes in the ordinary course.

D. The Court has Authority to Grant the Requested Relief Under Sections 363(b) and 105(a) of the Bankruptcy Code and Payment of Prepetition Sales/Use Taxes is a Valid Exercise of the Debtors' Fiduciary Duties Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code

17. The Court may grant the relief requested herein pursuant to the Bankruptcy Code. Section 363(b) provides, in pertinent part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” § 363(b)(1). Courts have long recognized that, where a sound business justification can be articulated, payment of prepetition claims under Section 363(b) of the Bankruptcy Code is permitted. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (holding that Section 363(b) gives a bankruptcy court “broad flexibility” to authorize a debtor to expend funds on account of prepetition claims if there is “some business justification” to justify payment).

18. The Court also may grant the requested relief pursuant to its equitable powers under Section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” § 105(a). Courts generally recognize that payments to prepetition creditors are appropriate pursuant to Section 105(a) of the Bankruptcy Code under the “doctrine of necessity” or the “necessity of payment” rule, where such payments are necessary to the continued operation of the debtor’s business. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. at 497 (“[I]t is only logical that the bankruptcy court be able to use Section 105(a) of the Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); *see also In re Matter of*

Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to the continued operation of the debtor). Indeed, a bankruptcy court's use of its equitable powers under the "doctrine of necessity" to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. The United States Supreme Court first articulated the equitable common law principle commonly referred to as the "doctrine of necessity" over 130 years ago in *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Courts today continue to recognize that the rationale for the "doctrine of necessity" is consistent with the "paramount goal" of chapter 11: "facilitating the continued operation and rehabilitation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176.

19. In addition, pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of creditors" *In re CoServ*, 273 B.R. at 497. Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.* Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.*; see also *In re Mirant Corp.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003) (allowing debtors to pay claims "reasonably believe[d]" to be authorized under the *CoServ* test or whose payment was necessary "in the exercise of their business judgment . . . in order for [the d]ebtors to continue their respective businesses"). This Court in *CoServ* noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *In re CoServ*, 273

B.R. at 497. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498. Payment of the prepetition Sales/Use Taxes in this instance meets each element of the *CoServ*

test.

20. Accordingly, pursuant to Sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, this Court is empowered to grant the relief requested herein and such relief is necessary, in the Debtors' discretion and business judgment, in order to prevent damage to the Debtors' businesses.

21. The Debtors submit that payment of the prepetition Sales/Use Taxes is an exercise of sound business judgment and necessary to permit a successful reorganization, as the Debtors' satisfaction of the prepetition Sales/Use Taxes is necessary to avoid the obstacles to a smooth transition through these Chapter 11 Cases and additional expenses such as interest, fees, and penalties. Significant disruptions of the Debtors' operations of the types described above threaten to irreparably impair the Debtors' ability to conduct a successful reorganization process and thereby maximize the value of the Debtors' estates for the benefit of creditors.

22. Bankruptcy courts in this jurisdiction and others have entered orders granting relief similar to the relief requested herein. *See, e.g., In re The LaSalle Group, Inc.*, Case No. 19-31484 (SGJ) (Bankr. N.D. Tex. May 21, 2019) (Docket No. 89); *In re PHI, Inc.*, Case No. 19-30923 (HDH) (Bankr. N.D. Tex. April 17, 2019) (Docket No. 275); *In re Erickson Incorporated*,

Case No. 16-34393 (HDH) (Bankr. N.D. Tex. Dec. 2, 2016) (Docket No. 126); *In re Forest Park Med. Ctr. at Southlake, LLC*, Case No. 16-40273 (RFN) (Bankr. N.D. Tex. Feb. 2, 2016) (Docket No. 74). The present circumstances warrant similar relief in these Chapter 11 Cases.

E. Banks Should be Authorized to Receive, Process, Honor and Pay Checks Issued and Transfers Requested to Pay the Prepetition Sales/Use Taxes

23. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of anticipated access to cash collateral and debtor-in-possession financing. Also, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment made with respect to the Sales/Use Taxes. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that this Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein.

Request for Waiver of Stay

24. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code Section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their business and preserve the value of the estates.

Reservation of Rights

25. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to dispute

any claim or an approval or assumption of any agreement, agreement, contract, or lease under Section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

26. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Debtors' secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for Ares Capital Corporation; (vi) counsel for any official committees appointed by this Court; (vii) the 20 largest unsecured creditors of each of the Debtors; and (viii) all governmental agencies having a regulatory or statutory interest in these cases (collectively, the "Notice Parties"). Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

Conclusion

WHEREFORE, based on the foregoing, the Debtors respectfully request that the Court (i) grant the Motion, and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 9th day of June, 2020.

HAYNES AND BOONE, LLP

By: /s/ David L. Staab

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al., ¹	§	Case No. 20-42002-ELM-11]
	§	
Debtors.	§	Jointly Administered

**ORDER (I) AUTHORIZING DEBTORS
TO PAY PREPETITION SALES/USE TAXES AND
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS PURSUANT TO
SECTIONS 105(a), 363(b), 507(a)(8) AND 541(d) OF THE BANKRUPTCY CODE**

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

Upon the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to Pay Prepetition Sales/Use Taxes and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers Pursuant to Sections 105(a), 363(b), 507(a)(8), and 541(d) of the Bankruptcy Code* (the "Motion")² of Vista Proppants and Logistics, LLC, *et al.* (collectively, the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Miscellaneous Rule No. 33 (N.D. Tex. August 3, 1984); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to satisfy Sales/Use Taxes due and owing to the Taxing Authorities, including, without limitation, those Taxing Authorities listed on **Exhibit 1** annexed hereto, that arose prior to the Petition Date, including Sales/Use Taxes subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

3. The Banks are authorized, at the Debtors' request, to receive, process, honor and pay, to the extent of cleared and sufficient funds on deposit, any and all checks issued or to be issued or electronic funds transfers requested or to be requested by the Debtors relating to this Order. The Banks shall not be liable to any party on account of: (a) following the Debtors' representations, instructions, or presentations as to this Order of the Court (without any duty of further inquiry); (b) the honoring of any prepetition checks, drafts, or wires in a good faith belief or upon a representation by the Debtors that the Court has authorized such prepetition check, draft, or wire pursuant to this Order; or (c) an innocent mistake made despite implementation of reasonable handling procedures. The Banks may rely on the representations of the Debtors regarding which checks that were drawn or instructions that were issued by the Debtors before the Petition Date should be honored postpetition pursuant to this Order.

4. The Debtors are authorized, but not directed, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the prepetition Sales/Use Taxes dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

5. Nothing contained in this Order or any action taken by the Debtors in implementing this Order shall be deemed (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for or validity of any claim of any Taxing Authority under applicable nonbankruptcy law, (iii) a waiver of any claims or causes of action which may exist against any Taxing Authority, or (iv) an assumption, adoption or rejection of any contract or lease between the Debtors and any third party under Section 365 of the Bankruptcy Code.

6. Notwithstanding anything in this Order to the contrary, (a) payments authorized by, and any authorizations contained in, this Order are subject to the terms, conditions, limitations, and requirements of any cash collateral or DIP financing orders entered in these Chapter 11 Cases (together with any approved budgets in connection therewith, the “DIP Financing Orders”) and (b) to the extent there is any inconsistency between the terms of such DIP Financing Orders and any action taken or proposed to be taken hereunder, the terms of such DIP Financing Orders shall control.

7. Entry of this Order is necessary to avoid immediate and irreparable harm and, to the extent the relief granted herein implicates the use of property of the estate and Section 363 of the Bankruptcy Code, the requirements under Bankruptcy Rule 6003(b) have been satisfied.

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

9. Notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

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

###END OF ORDER###

Submitted by:

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT 1

List of Taxing Authorities for Sales/Use Taxes

Taxing Authority	Taxing Authority Address
State of Oklahoma	Connors Building, Capitol Complex 2501 North Lincoln Boulevard Oklahoma City, OK 73194
State of Texas	P.O. Box 149354 Austin, TX 78714-9354