

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

<p>In re:</p> <p>WELDED CONSTRUCTION, L.P., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p> <p>-----</p> <p>In re:</p> <p>WELDED CONSTRUCTION, L.P., AND WELDED CONSTRUCTION MICHIGAN, LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-vs-</p> <p>PRIME NDT SERVICES, INC.</p> <p style="text-align: center;">Defendant.</p>	<p>Chapter 11</p> <p>Case No. 18-12378 (CSS)</p> <p>(Jointly Administered)</p> <p>Adv. Pro. No. 19-50180 (CSS)</p> <p>Hearing Date: March 31, 2020 at 10:00 a.m. (ET)</p> <p>Objection Deadline: March 17, 2020 at 4:00 p.m. (ET)</p>
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**DEBTORS' MOTION, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 9019, FOR AN ORDER APPROVING AND
AUTHORIZING THE SETTLEMENT AGREEMENT BY AND
BETWEEN THE DEBTORS AND PRIME**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the settlement agreement (the “Settlement Agreement”)² by and between the Debtors and Prime NDT Services,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552- 0470.

² Capitalized terms not herein defined shall have the meanings ascribed to them in the Settlement Agreement.



Inc. (“Prime” and, together with the Debtors, the “Parties”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

A. General Background

3. On October 22, 2018 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of 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. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors (the “Committee”) was appointed on October 30, 2018.

4. Additional information regarding the Debtors' businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 4].

B. The Project

5. Welded operated as a mainline pipeline construction contractor headquartered in Perrysburg, Ohio. *See id.* In early summer 2018, Welded oversaw the construction of three (3) separate pipeline "spreads" within the Mariner East Pipeline (the "Project") owned by Sunoco Marketing Partners & Terminals L.P. and Sunoco Pipeline L.P. (collectively, "Sunoco"), totaling approximately 152.6 miles of high pressure liquefied natural gas pipeline. *Complaint* at p. 1–2 [Adv. Docket No. 1] (the "Complaint").

6. Welded engaged Prime to perform non-destructive radiographic testing ("NDT") of each weld on the Project in accordance with API Standard 1104. *See generally Construction Subcontract*, dated January 6, 2016, attached as Exhibit 1 to the Complaint (the "Subcontract").

7. In late June 2018, Sunoco's independent third-party auditor (the "Sunoco Auditor") identified irregularities in several of the images that one of Prime's technician crews submitted. *See Welded's Response in Opposition to Prime NDT Services, Inc.'s Motion for Partial Summary Judgment* at p. 6 [Adv. Docket No. 92] (the "Response"). It was determined that one of Prime's technician crews had submitted non-compliant x-ray images for over seventy (70) individual welds over the span of nearly fifty (50) miles. *Id.*

C. The Adversary Proceeding

8. On March 27, 2019, Plaintiffs commenced an adversary proceeding (the “Adversary Proceeding”) by filing the Complaint, alleging breach of contract and breach of warranty claims against Prime. Following motion practice on a motion to withdraw the reference to the United States District Court for the District of Delaware (the “District Court”) [Adv. Docket No. 5] and a partial motion to dismiss the Complaint [Adv. Docket No. 7], Prime filed its *Answer* to the Complaint on September 9, 2019 [Adv. Docket No. 39].

9. On April 26, 2019, Prime filed *Prime NDT Services, Inc.’s Motion to Withdraw the Reference of the Adversary Proceeding* (the “Motion to Withdraw”) [Adv. Docket No. 5], seeking to withdraw the reference of the Adversary Proceeding to the United States District Court for the District of Delaware (the “District Court”). On February 5, 2020 the District Court entered an order denying the Motion to Withdraw and closing the District Court action [Adv. Docket No. 111].

10. Pursuant to the *Fourth Amended Agreed Scheduling Order* [Adv. Docket No. 72], the Parties briefed case-dispositive motions and *motions in limine* [see Adv. Docket No. 85, 86, 87, 92, 93, 94 (sealed) & 95 (redacted)]. The Court entered orders on the Parties’ motions (i) denying Prime’s motion for partial summary judgment [Adv. Docket No. 112], (ii) granting Prime’s motion *in limine* to preclude certain expert testimony from one of Welded’s expert witnesses [Adv. Docket No. 114], and (iii) denying Prime’s motion to preclude evidence of damages related to subcontractor direct pay [Adv. Docket No. 115].

D. The Escrow Agreement

11. In an effort to effectuate a Bankruptcy Court order approving a settlement between Sunoco and the Debtors with respect to the Project [Docket No. 392], Sunoco, Welded, and Prime

entered into a *Subcontractor Direct Pay Agreement and Authorization* and a *Subcontractor's Release of Liens and Claims* (the "Settlement Documents"), which address the claims related to the services, work, or supplies, that Prime provided to the Project. The Debtors required Prime to execute that certain *Escrow Agreement*, dated April 17, 2019 (the "Escrow Agreement"), escrowing the funds paid pursuant to the Settlement Documents pending resolution of the Adversary Proceeding.

E. The Settlement Agreement

12. During the course of the litigation, the Parties engaged in extensive, good-faith negotiations regarding the Adversary Proceeding and ultimately reached a settlement (the "Settlement Agreement") that resolves the Adversary Proceeding.

13. The material terms of the Settlement Agreement are as follows:³

- i. Prime will pay \$6.2 million (the "Payment") to the Debtors within ten (10) days following Bankruptcy Court approval of the Settlement Agreement. The Payment will conclude the Adversary Proceeding in its entirety;
- ii. following receipt of the Payment and submission of the Settlement Agreement to the Escrow Agent in accordance with the Escrow Agreement, the Funds held in the Escrow Account will be released to Prime;
- iii. upon Welded's receipt of the Payment, the Parties will release all claims against each other, and will cooperate in the dismissal of the Adversary Proceeding; and
- iv. the Settlement Agreement and obligations of the Parties thereunder are subject to the approval of the Bankruptcy Court and will be effective upon entry of the Bankruptcy Court's approval order.

³ The following is a summary of the Settlement Agreement and is qualified in its entirety by reference to the Settlement Agreement, the terms of which control.

RELIEF REQUESTED

14. By this Motion, the Debtors request entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, (i) approving the Settlement Agreement attached as Exhibit 1 to the Proposed Order and (ii) authorizing the Debtors to take any and all actions necessary to effectuate the Settlement Agreement.

BASIS FOR RELIEF REQUESTED

15. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The Third Circuit has enumerated four factors that should be considered in determining whether a settlement should be approved: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *accord Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor).

16. The decision to approve a settlement “is within the sound discretion of the bankruptcy court.” *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *see also In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986) (cited with approval in *Martin*). The bankruptcy court should not substitute its judgment for that of the debtor. *See Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803. The bankruptcy court is not to decide the numerous questions of law or fact raised by litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *see also World Health Alts.*, 344 B.R. at 296 (“[T]he court does not have to be convinced that the settlement is the best possible

compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.” (internal citations and quotations omitted)).

17. The resolutions embodied in the Settlement Agreement are reasonable and in the best interests of the Debtors and all of their stakeholders. The Settlement Agreement provides for a fair and practical resolution of the Parties’ disputes in the Adversary Proceeding. Although the Debtors believe they would ultimately prevail should these issues be litigated to a determination on the merits, the time and resources that such litigation would require could threaten creditor recoveries and consume the Debtors’ limited resources, to the detriment of their bankruptcy estates and their creditors. The Settlement Agreement was the product of substantial good-faith discussions and negotiations between the Parties, and the agreement embodied therein falls well above the lowest point in the range of reasonableness. In addition, as discussed below, the applicable *Martin* factors weigh in favor of approving the Settlement Agreement.

A. The Probability of Success in Litigation

18. Had the Parties failed to reach a consensual resolution with respect to the various issues addressed by the Settlement Agreement, the Debtors would have been forced to litigate, at a significant cost, uncertainty, and risk to them and their estates. By contrast, the Settlement Agreement provides for a cost-effective resolution of the Adversary Proceeding, as well as finality and certainty for Debtors, their estates, and creditors and other parties in interest in these chapter

11 cases. In light of the foregoing, the first *Martin* factor weighs significantly in favor of approving the Settlement Agreement.

B. The Likely Difficulties in Collection

19. The Debtors do not believe that collection of any judgment that could be obtained is a significant issue underpinning the Settlement Agreement. This factor is thus neutral or not applicable.

C. The Complexity of Litigation Involved and the Expense, Inconvenience, and Delay Necessarily Attending It

20. The third factor in *Martin*'s four-factor test weighs in favor of approval of the Settlement Agreement because, in the absence of a consensual resolution of the Parties' issues, these chapter 11 cases would be burdened by significant additional expense and delay, to the detriment of the Debtors' estates and stakeholders. The present disputes between the Parties are fact-intensive and, absent a settlement, would require the Parties to proceed to a trial before the Court (in fact, the Parties were actively preparing for a trial that was scheduled to begin on February 18, 2020), which would be a complex, lengthy, expensive, and burdensome process—a process that the Settlement Agreement wholly avoids.

21. Accordingly, the third factor of *Martin*'s four-factor test weighs in favor of the Court approving the Settlement Agreement.

D. Paramount Interests of Creditors

22. The Settlement Agreement serves the paramount interest of the Debtors' creditors. As noted above, the Settlement Agreement will allow the Debtors to avoid further litigation and focus their limited resources on winding down their affairs and these chapter 11 cases in a timely and efficient manner. Indeed, obviating litigation of the disputes covered by the Settlement Agreement will allow the Parties and their professionals to focus on working collaboratively to

achieve an efficient exit from Chapter 11. Furthermore, the Committee supports the relief requested herein. Accordingly, the Debtors submit that the final *Martin* factor is also met.

23. Finally, the Settlement Agreement and the transactions contemplated therein are a sound exercise of the Debtors' business judgment. The Settlement Agreement is the product of extensive arms'-length negotiations between the Parties and their respective representatives, including two (2) full-day mediations, and represents a comprehensive resolution of the Parties' disputes. In light of the above, the resolution of these disputes embodied in the Settlement Agreement (i) is fair and equitable; (ii) represents a compromise that rests well above the lowest point in the range of reasonableness; (iii) avoids the expense, delay, inconvenience, and uncertainty that would attend any litigation of the Parties' issues; and (iv) advances the paramount interests of creditors. Therefore, the Settlement Agreement satisfies Bankruptcy Rule 9019 and should be approved by the Court.

NOTICE

24. The Debtors will provide notice of this Motion to: (i) the U.S. Trustee; (ii) counsel for the Committee; (iii) counsel for Prime; and (iv) all parties that, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as Exhibit A, (i) authorizing the Debtors to enter into and perform in accordance with the Settlement Agreement and approving the terms thereof and (ii) granting such other and further relief as the Court deems just and proper.

Dated: February 27, 2020
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR,
LLP

/s/ Erin D. Edwards

Sean M. Beach (No. 4070)
Kevin A. Guerke (No. 4096)
Erin D. Edwards (No. 4392)
Tara C. Pakrouh (No. 6192)
Rodney Square
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Counsel to the Debtors

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

<p>In re:</p> <p>WELDED CONSTRUCTION, L.P., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p> <p>-----</p> <p>In re:</p> <p>WELDED CONSTRUCTION, L.P., AND WELDED CONSTRUCTION MICHIGAN, LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-vs-</p> <p>PRIME NDT SERVICES, INC.</p> <p style="text-align: center;">Defendant.</p>	<p>Chapter 11</p> <p>Case No. 18-12378 (CSS)</p> <p>(Jointly Administered)</p> <p>Adv. Pro. No. 19-50180 (CSS)</p> <p>Hearing Date: March 31, 2020 at 10:00 a.m. (ET)</p> <p>Objection Deadline: March 17, 2020 at 4:00 p.m. (ET)</p>
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NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) COUNSEL TO THE COMMITTEE; (III) COUNSEL TO PRIME; AND (IV) ALL PARTIES WHO, AS OF THE FILING OF THE MOTION, HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (together, the “**Debtors**”) have filed the attached *Debtors’ Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement Agreement by and between the Debtors and Prime* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **March 17, 2020 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552- 0470.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON MARCH 31, 2020 AT 10:00 A.M. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

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

Dated: February 27, 2020
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR,
LLP

/s/ Erin D. Edwards

Sean M. Beach (No. 4070)
Kevin A. Guerke (No. 4096)
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Facsimile: (302) 571-1253

Counsel to the Debtors

EXHIBIT A

Proposed Order

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

<p>In re:</p> <p style="text-align: center;">WELDED CONSTRUCTION, L.P., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p> <p>-----</p> <p>In re:</p> <p style="text-align: center;">WELDED CONSTRUCTION, L.P., AND WELDED CONSTRUCTION MICHIGAN, LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-vs-</p> <p style="text-align: center;">PRIME NDT SERVICES, INC. Defendant.</p>	<p>Chapter 11</p> <p>Case No. 18-12378 (CSS)</p> <p>(Jointly Administered)</p> <p>Adv. Pro. No. 19-50180 (CSS)</p> <p>Reference Docket No. ____</p>
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**ORDER APPROVING AND AUTHORIZING THE SETTLEMENT AGREEMENT
BY AND BETWEEN THE DEBTORS AND PRIME**

Upon consideration of the motion (the “Motion”)² of the Debtors for entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement (attached hereto as Exhibit 1) entered into by and between the Debtors and Prime, as more fully described in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552- 0470.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion or the Settlement Agreement, as applicable.

core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order on the Motion consistent with Article III of the United States Constitution; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and this Court having found that the relief requested in the Motion is justified by the facts and circumstances; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. The Settlement Agreement, a copy of which is attached hereto as Exhibit 1, is approved in its entirety pursuant to sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.
3. The releases set forth in the Settlement Agreement are approved.
4. The Debtors are authorized and empowered to take any and all actions necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Settlement Agreement.
5. Notwithstanding anything in the Bankruptcy Rules to the contrary, this Order shall become effective immediately upon its entry.
6. This Court shall retain jurisdiction to hear any and all disputes arising out of the interpretation or enforcement of this Order.

EXHIBIT 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into as of February 27 2020, by and between Welded Construction L.P. and Welded Construction Michigan, LLC (collectively, the “Debtors,” “Plaintiffs,” or “Welded”) and Prime NDT Services, Inc. (“Prime” or “Defendant” and, together with the Debtors, the “Parties”).¹

RECITALS

- A. On October 22, 2018, each of the Debtors commenced a voluntary case under Chapter 11 of the Bankruptcy Code.
- B. Welded operated as a mainline pipeline construction contractor headquartered in Perrysburg, Ohio. In the summer of 2018, Welded oversaw the construction of three separate pipeline “spreads” within the Mariner East Pipeline (the “Project”) owned by Sunoco Marketing Partners & Terminals L.P. and Sunoco Pipeline L.P. (collectively, “Sunoco”).
- C. Prime was retained by Welded to perform non-destructive examinations x-rays of the completed welds on the PPP 1 spread of the Project (“Contract”).
- D. On March 27, 2019, Plaintiffs commenced an adversary proceeding (the “Adversary Proceeding”) by filing a *Complaint* [Adv. Docket No. 1]. Following motion practice on a motion to withdraw the reference to the United States District Court for the District of Delaware (the “District Court”) [Adv. Docket No. 5] and a partial motion to dismiss the *Complaint* [Adv. Docket No. 7], Prime filed its *Answer* to the *Complaint* on September 9, 2019 [Adv. Docket No. 39].
- E. In an effort to effectuate a Bankruptcy Court Order approving a settlement between Sunoco and the Debtors with respect to the Project [Docket No. 392], Sunoco, Welded, and Prime entered into a *Subcontractor Direct Pay Agreement and Authorization* and a *Subcontractor’s Release of Liens and Claims* (the “Settlement Documents”), which addressed the claims related to the services, work, or supplies, that Prime provided to the Project through October 18, 2018. The Debtors and Prime executed that certain *Escrow Agreement*, dated April 17, 2019 (the “Escrow Agreement”),² escrowing the funds paid pursuant to the Settlement Documents pending resolution of the Adversary Proceeding.
- F. The Parties desire to settle the controversy between them in order to avoid the cost, inconvenience, delays and uncertainties involved in further legal proceedings, without any Party conceding the correctness of the position of the other.

AGREEMENT

NOW, THEREFORE, subject to paragraph 6 below, the Parties, by and through their respective counsel, agree as follows:

¹ The parties to this Agreement may be referred to collectively as the “Parties” or individually as a “Party”.

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

1. Payment. Prime shall pay \$6.2 million (the “Payment”) to Welded within ten (10) days following Bankruptcy Court approval of this Agreement, provided that the Payment will not be due under any circumstances until March 16, 2020. The Payment will conclude the Adversary Proceeding in its entirety.
2. Dismissal of Pending Proceeding. The Parties shall file a stipulation of dismissal within three calendar (3) days of Welded’s receipt of the Payment, dismissing the Adversary Proceeding with prejudice.
3. Release of Escrow Funds. Following receipt of the Payment and submission of this Agreement to the Escrow Agent in accordance with the Escrow Agreement, the Funds held in the Escrow Account shall be released to Prime.
4. Release by Prime. Upon Welded’s receipt of the Payment, Prime, on behalf of itself and each of its affiliates, parent entities, subsidiaries, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, a “Prime Releasing Party”, and collectively, the “Prime Releasing Parties”), unconditionally and forever do fully and finally release, acquit and discharge each of the Debtors, and each of their respective estates, affiliates, parent entities, subsidiaries, partners, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, a “Debtor Released Party”, and collectively, the “Debtors Released Parties”), from any and all actions, complaints, causes of action, claims (whether they be unsecured, secured, priority, and/or administrative, including crossclaims, counterclaims, rights of set-off and recoupment), promises, obligations, losses, demands, damages, expenses, fees, liens, attorney’s fees or costs and any and all liabilities that any Prime Releasing Party has or had against any Debtor Released Party, of whatsoever nature and kind, whether known or unknown, now existing or hereafter arising, arising at law or in equity, in connection with, based upon, by reason of, relating to or arising from the Adversary Proceeding, the Project and/or the Contract, including, but not limited to, those that arise from or relate in any way to any agreements between or among any releasing party and any released party, and the transactions contemplated thereby, whether founded in contract, in tort, or pursuant to any other theory of liability; ***provided, however,*** that such releases shall not release any Debtor Released Party from such Party’s obligations under this Agreement.
5. Release by the Debtors. Upon Welded’s receipt of the Payment, each of the Debtors, on behalf of themselves and each of their respective estates, affiliates, parent entities, subsidiaries, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, an “Debtor Releasing Party”, and collectively, the “Debtors Releasing Parties”), unconditionally and forever do fully and finally release, acquit and discharge Prime, and each of its affiliates, parent entities, subsidiaries, partners, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, a “Prime Released Party”, and collectively, the “Prime Released Parties”), from any and all actions, complaints, causes of action, claims (whether they be unsecured, secured, priority, and/or administrative,

including crossclaims, counterclaims, rights of set-off and recoupment), promises, obligations, losses, demands, damages, expenses, fees, liens, attorney's fees or costs and any and all liabilities that any Debtor Releasing Party has or had against any Prime Released Party, of whatsoever nature and kind, whether known or unknown, now existing or hereafter arising, arising at law or in equity, in connection with, based upon, by reason of, relating to or arising from the Adversary Proceeding, the Project and/or the Contract, including, but not limited to, those that arise from or relate in any way to any agreements between or among any releasing party and any released party, and the transactions contemplated thereby, whether founded in contract, in tort, or pursuant to any other theory of liability, *provided, however*, that such releases shall not release any Prime Released Party from such Party's obligations under this Agreement.

6. Binding Upon Bankruptcy Court Approval. This Agreement and obligations of the Parties hereunder are subject to the approval of the Bankruptcy Court and shall be effective upon entry of the Bankruptcy Court's approval order. To the extent that this Agreement is not approved, all Parties' rights are expressly reserved and preserved.
7. Attorneys' Fees. Each Party shall be responsible for its respective costs and expenses (including, without limitation, attorneys' fees) incurred by it in connection with this Agreement, the Adversary Proceeding, and any matter that is the subject of the releases granted herein. In the event any legal proceeding arises in connection with the interpretation or enforcement of this Agreement, the prevailing Party therein shall be entitled to receive from the other Party the prevailing Party's costs and expenses, including reasonable attorneys' fees incurred in connection therewith, in preparation therefor and on appeal therefrom.
8. Successors and Assigns. This Agreement shall be binding upon the Parties and their respective successors and assigns.
9. Authorizations. Each Party represents and warrants to each other Party that it is authorized to execute this Agreement, that it has full power and authority to enter into this Agreement and effectuate the matters provided hereunder and that this Agreement is duly executed and delivered by it, and constitutes its valid, binding agreement in accordance with its terms (subject to Bankruptcy Court approval) and that it has not transferred any claim that is the subject of this Agreement.
10. Entire Agreement. This Agreement contains the entire agreement among the Parties relating to the subject matter hereof and can be amended, waived or otherwise modified only by a signed writing executed by each of the Parties.
11. Counterparts. This Agreement may be executed in multiple counterparts, any of which may be transmitted by electronic (e-mail) transmission, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Agreement to present any copy signed by the Parties hereto to be charged.
12. No Admission of Liability. It is expressly understood and agreed that entry into this Agreement does not constitute an admission of liability, fault, wrongdoing, or any fact by any of the Parties.

13. Governing Law and Jurisdiction. The United States Bankruptcy Court for the District of Delaware shall have exclusive jurisdiction to hear any matter concerning the interpretation or enforcement of this Agreement. Any matter concerning the interpretation or enforcement of this Agreement shall be construed under the laws of the State of Delaware (without application of principles of conflicts of law) and the Bankruptcy Code.
14. Severability. If any term, clause or provision of this Agreement shall be judged to be invalid, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the invalid term, clause or provision or by its severance therein, unless such continued effectiveness of this Agreement, as modified, would be contrary to the basic understanding and intentions of the parties as expressed herein. The Parties shall endeavor in good faith negotiations to replace the invalid term, clause or provision with a valid provision, the effect of which would accomplish the intention of the Parties as closely as possible.
15. Construction of Ambiguity. It is acknowledged that each of the Parties has participated in the drafting of this Agreement and any ambiguity found herein shall not be construed against any Party.
16. Knowledge of Terms of Agreement. Each Party warrants and represents that in entering into this Agreement, it is relying solely upon its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. No Party is relying on any representation or statement made by any other Party or any person representing such other Party except for the representations and warranties expressly set forth in this Agreement. By signing this Agreement, the Parties hereby confirm and state that (a) they have each carefully read this Agreement, (b) that they each know the content of this Agreement and (c) that they have each been represented by independent legal counsel in connection with the negotiation of this Agreement.
17. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties and their respective successors and assigns (and, solely in the case of sections 4–5, the Released Parties and the Releasing Parties), any rights, remedies, obligations or liabilities under or by reason of this Agreement.
18. No Assignment. Each Party expressly represents and warrants that it has not assigned, pledged or otherwise sold or transferred, either by written instrument or otherwise, any right, title, interest, or claims it has or may have in connection with or arising out of the Adversary Proceeding, which is the subject of this Settlement Agreement, with the exception of the assignment of a part of its interest made to its attorney, if any, which assigned interest, if any, continues to be held by said attorney. This provision does not apply to any transfer or assignment of rights, title, or interests relating to Welded’s chapter 11 plan of reorganization.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have voluntarily and with full knowledge executed this Agreement or caused it to be executed by their duly authorized representative.

AGREED BY:

Dated: February 27, 2020

Welded Construction, L.P., and
Welded Construction Michigan, LLC

By: 

Name: Frank A. Pometti

Title: Chief Restructuring Officer

Dated: February __, 2020

Prime NDT Services, Inc.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have voluntarily and with full knowledge executed this Agreement or caused it to be executed by their duly authorized representative.

AGREED BY:

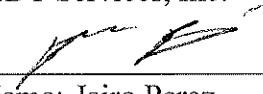
Dated: February __, 2020

Welded Construction, L.P., and
Welded Construction Michigan, LLC

By: _____
Name: Frank A. Pometti
Title: Chief Restructuring Officer

Dated: February 27, 2020

Prime NDT Services, Inc.

By:  _____
Name: Jairo Perez
Title: Chief Financial Officer