

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

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In re:)	Chapter 11)		
))		
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (___))		
))		
Debtors.)	(Joint Administration Requested))		

**DEBTORS’ MOTION FOR AN ORDER, PURSUANT TO
SECTIONS 105(a), 345, 363, 1107(a) AND 1108 OF THE BANKRUPTCY CODE,
BANKRUPTCY RULE 2015, AND LOCAL RULE 2015-2, (I) AUTHORIZING
AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM,
(II) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND BUSINESS
FORMS, (III) WAIVING THE REQUIREMENTS OF SECTION 345(b) ON AN INTERIM
BASIS, (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POST-PETITION
INTERCOMPANY CLAIMS, AND (V) GRANTING CERTAIN RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby file this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to sections 105(a), 345, 363, 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), Rule 2015 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2015-2(a) and (b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) authorizing and approving the Debtors’ continued use of their existing cash management system, (ii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with (a) the Debtors’ practices in

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 26933 Eckel Road, Perrysburg, OH 43551.



connection with their existing cash management system or (b) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these chapter 11 cases, (iii) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors' deposit practices on an interim basis, and (iv) granting certain related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Frank A. Pometti in Support of Debtors' Chapter 11 Petitions and First Day Motions and Applications* (the "**First Day Declaration**"),² filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The 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 (the "**Amended Standing Order**"). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2(a) and (b).

BACKGROUND

A. General

2. On the date hereof (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

² Each capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration.

1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

3. Additional information regarding the Debtors' businesses, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

B. Cash Management System

4. The Debtors consist of affiliated entities and utilize a centralized cash management system, as described in detail below (the "**Cash Management System**"). The Debtors maintain accounts (collectively, the "**Bank Accounts**") with: (a) Huntington National Bank ("**Huntington Bank**"); (b) JPMorgan Chase ("**JPM**"); (c) M&T Bank ("**M&T**"); and (d) MetaBank.

5. The following is a list of the Debtors' Bank Accounts, along with a general description of each:

(i) Huntington Bank Operating Account (last four digits 0247): The operating account, which is maintained at Huntington Bank (the "**Huntington Bank Operating Account**"), is the central cash account for the Cash Management System. Payments made to the Debtors, and other receipts of the Debtors—whether from ACH payments, wire transfers or manual deposit—are made to this account. This account funds the payroll account and all other disbursements made by the Debtors.

(ii) Huntington Bank Payroll Account (last four digits 8815): The payroll account, which is also maintained at Huntington Bank, is used to fund the Debtors' direct deposit payroll. Periodically, if EFT payments are not accepted, manual checks are issued to pay garnishments when deducted from Employees' pay.

(iii) JPM Account (last four digits 1962): At one time, this account held the majority of the Debtors' cash, which was transferred on as-needed basis to the Huntington Bank Operating Account to fund the Debtors' expenditures. However, over a period of time, the balance of this account has been continually reduced and not replenished, and the current balance is approximately \$131k. The Debtors intend to transfer excess amounts in this account to the Huntington Bank Operating Account, and use this JPM Account as a segregated account (the "**Columbia Gas Segregated Account**") in connection with their agreement with Columbia Gas Transmission, LLC (and for purposes of this Motion, together with its parents, subsidiaries, and affiliates, "**Columbia Gas**") with respect to the completion of the Leach Xpress

and Mountaineer XPress Pipelines (the “**Columbia Gas Agreement**”), which agreement is more fully described in the *Debtors’ Motion for Entry of an Order, Pursuant to Sections 105(a), 363(b), 503(b)(1), 1107(a) and 1108 of the Bankruptcy Code, Authorizing, But Not Directing (I) the Debtors to Pay Certain Prepetition Claims, Conditioned upon Prior Customer Payment, (II) The Debtors to Honor Customer Obligations, (III) the Debtors to Implement Control Procedures for Customer Project Funding and Completion, and (IV) Granting Related Relief* filed contemporaneously herewith. The Columbia Gas Segregated Account will be maintained and used solely for any funds received from Columbia Gas under the Columbia Gas Agreement. All funds in the Columbia Gas Segregated Account will be and shall remain, at all times, the exclusive property of Columbia Gas, and any funds in the Columbia Gas Segregated Account shall be free from and shall not be encumbered by any liens or claims granted in connection with the Debtors’ use of cash collateral and post-petition financing or any other liens or claims of any other party.³

(iv) M&T Checking Account (last four digits 4827): In connection with the Debtors’ obligations to their union employees, the Debtors are required to provide a bank account for any such employees in rural locations, in this case West Virginia, to cash their pay cards.

(v) Welded Michigan Construction, LLC Huntington Bank Account (last four digits 5609): As discussed in the First Day Declaration, Debtor Welded Construction Michigan, LLC was formed to provide a single customer with certain of the same services offered by Debtor Welded Construction, L.P. This account at Huntington Bank was established to receive payments from that customer. Upon receipt into such account, the Debtors manually transferred the funds to the Huntington Bank Operating Account.

(vi) MetaBank Account (last four digits 4455): Similar to the M&T Checking Account, this account was established in connection with the Debtors’ obligations to their union employees. The Debtors fund this account solely for payroll purposes and, among other things, to be able to pay their Union Employees on their last day of employment.

6. The Debtors request permission to continue to use the funds in the Bank Accounts during these chapter 11 cases in accordance with the Cash Management System.

³ In the event that the Debtors establish any other segregated accounts in connection with agreements with the Debtors’ customers for the completion of the customers’ projects, such additional segregated accounts (each, an “**Additional Customer Segregated Account**”) shall similarly be maintained and used solely for any funds received from such customers under the related agreements, and all funds in any Additional Customer Segregated Account will be and shall remain, at all times, the exclusive property of the related customer, and any funds in any Additional Customer Segregated Account shall be free from and shall not be encumbered by any liens or claims granted in connection with the Debtors’ use of cash collateral and post-petition financing or any other liens or claims of any other party.

RELIEF REQUESTED

7. By this Motion, the Debtors request the Court to enter the Proposed Order:

- (i) authorizing and approving the continued use of their existing Cash Management System;
- (ii) granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all pre-petition bank accounts, open new accounts designated as debtor-in-possession accounts, and to provide new business forms and stationary) to the extent that such requirements are inconsistent with (a) the Debtors' practices in connection with their Cash Management System, or (b) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these chapter 11 cases;
- (iii) authorizing the Debtors' deposit practices and waiving the requirements of section 345(b) of the Bankruptcy Code in connection therewith on an interim basis; and (iv) granting certain related relief.

BASIS FOR RELIEF

A. The Court Should Authorize the Debtors' Uninterrupted Use of Their Existing Cash Management System

8. The Debtors seek authority to continue utilizing their current Cash Management System, as described above. It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of such funds in order to efficiently and effectively operate their business. Any disruption to the Cash Management System would seriously harm the Debtors. Maintenance of the existing Cash Management System will prevent any unexpected or inopportune interruption to the Debtors' business operations while protecting the Debtors' cash for the benefit of their estates. Requiring the Debtors to change their Cash

Management System at this critical time would, among other things, cause unnecessary disruption to the Debtors and their business affairs.

9. The Cash Management System utilizes the Bank Accounts to effectively and efficiently collect, transfer, and disburse funds as needed in the Debtors' general business operations. The Cash Management System provides significant benefits to the Debtors, including the ability to: (i) closely track, and thus control, all corporate funds; (ii) ensure cash availability; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. A disruption in the Cash Management System could cause delays in the collection and disbursement of funds, thus impeding the Debtors' ability to avoid an unexpected or inopportune interruption in their operations during the pendency of these chapter 11 cases. Furthermore, the Debtors' chapter 11 cases will be facilitated by preserving the "business as usual" atmosphere, and avoiding the distractions that would inevitably be associated with a substantial disruption in the Cash Management System.

10. The Debtors believe that only if the Bank Accounts are continued in their current form can the Debtors proceed through the chapter 11 process in an efficient and cost-effective manner. The Debtors will ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. The Debtors will also maintain records of post-petition transfers within the Cash Management System, so that transfers and transactions will be documented in their books and records to the same extent such information was maintained by the Debtors prior to the Petition Date.

11. Accordingly, the Debtors respectfully request that the Court authorize the continued use of the Cash Management System, provided that no prepetition checks, drafts, wire transfers, or other forms of tender that have not yet cleared the relevant drawee bank as of the Petition Date will be honored unless authorized by separate order of this Court.

12. The Debtors also request that no bank participating in the Cash Management System (each, a “**Cash Management Bank**,” and collectively, the “**Cash Management Banks**”) that honors a prepetition check or other item drawn on any account that is the subject of this Motion (i) at the direction of the Debtors, (ii) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored post-petition. The Debtors believe that such flexibility accorded the Cash Management Banks is necessary to induce the Cash Management Banks to continue providing cash management services without additional credit exposure.

B. The Court Should Grant the Debtors a Waiver of the U.S. Trustee Guidelines

13. The Debtors further request from the Court a waiver of certain bank account and related requirements of the U.S. Trustee (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and to provide new business forms and stationary) to the extent that such requirements are inconsistent with (i) the Debtors’ practices in connection with their Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these chapter 11 cases.

14. The U.S. Trustee has issued certain chapter 11 operating guidelines pursuant to 28 U.S.C. § 586 (the “**U.S. Trustee Guidelines**”). These guidelines require that a chapter 11 debtor, among other things:

- (i) close all existing bank accounts;
- (ii) open new bank accounts in a depository approved by the U.S. Trustee that are designated as debtor-in-possession accounts (“**DIP Accounts**”), with separate DIP Accounts established for an operating account, a tax account (to the extent that payroll or other taxes are an issue for the debtor), and a payroll account (to the extent that the debtor had a separate payroll account prepetition);
- (iii) obtain and utilize new checks for all DIP Accounts that bear the designation “Debtor-in-Possession” and contain other information about the debtor’s chapter 11 case, and insure that the signature cards for all DIP Accounts clearly indicate that the debtor is a “Debtor-in-Possession”;
- (iv) deposit all receipts and make all disbursements only through the approved DIP Accounts, with any funds in excess of those required for current operations being maintained in an interest-bearing account;
- (v) deposit to the tax DIP Account sufficient funds to pay any tax liability (when incurred) associated with the debtor’s payroll; and
- (vi) deposit all estate funds into DIP Accounts with a financial institution that agrees to comply with the requirements of the U.S. Trustee (which will be monitored by the U.S. Trustee), with no DIP Account exceeding the insured or collateralized limits of that approved depository.

15. If enforced in these chapter 11 cases, given the nature of the Debtors’ business, such requirements would cause disruption to the Debtors’ business and would impair the Debtors’ chapter 11 efforts. The Bank Accounts represent an established Cash Management System that the Debtors need to maintain to ensure smooth collections and disbursements in the ordinary course of their business. Therefore, to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into chapter 11 as possible, the Debtors should be permitted to continue to maintain their Bank Accounts and, if necessary, open new accounts and

close existing accounts, in the ordinary course of business. Otherwise, transferring their Bank Accounts will be disruptive, time consuming, and expensive.

16. The Court has the authority to grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) provides, in relevant part, that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The relief requested herein is both necessary and appropriate to allow the Debtors to successfully administer these chapter 11 cases, to optimize their post-petition business performance and to maximize the value of their estates.

17. Accordingly, the Debtors request that the Court waive the strict enforcement of the requirement that the Debtors open new bank accounts. The Debtors further request that their existing Bank Accounts be deemed debtor-in-possession accounts, and that the Debtors be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period.

18. A centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticability of maintaining separate cash accounts for the many different purposes that require cash.” In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1992), aff’d in part, rev’d in part on other grounds, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that requiring the maintenance of all accounts separately “would be a huge administrative burden and economically inefficient.” In re Columbia Gas Sys, Inc., 997 F.3d at 1061; see also In re Southmark Corp., 49 F.3d 1111, 1114

(5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operation and assets”).

19. Accordingly, bankruptcy courts routinely grant debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively “simple matter.” In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); see Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition “routine cash management system” was entirely consistent with applicable provisions of the Bankruptcy Code). Courts in this circuit have recognized that allowing a debtor to maintain existing cash management systems is often appropriate. See, e.g., In re Genesis Health Ventures, Inc., 402 F.3d 416, 424 (3d Cir. 2005); In re Kindred Healthcare, Inc., 2003 WL 22327933, at *1 (Bankr. D. Del, Oct. 9, 2003); In re Columbia Gas Sys., 997 F.2d at 1061 (recognizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient”).

20. The Debtors represent that if the relief requested is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them prior to the Petition Date, other than those authorized by the Court. To prevent the possible inadvertent payment of prepetition claims, except for those otherwise authorized by the Court, the Debtors will work closely with the Cash Management Banks to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent the Court’s approval.

21. The Debtors also request that they be authorized to continue to use all correspondence and business forms existing immediately before the Petition Date without reference to the Debtors’ status as debtors in possession. The Debtors, in the ordinary course

of their business, use many checks, invoices, letterhead, stationary, purchase orders, and other correspondence and business forms. To operate in an orderly fashion, the Debtors need to be permitted to use their existing forms without alteration or change. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession as a result of the size and publicity surrounding these chapter 11 cases.

22. If the Debtors were required to change their forms, they would be forced to choose standard forms rather than use their current forms, with which the Debtors' employees, customers, and vendors are familiar. Such a change in operations would create a sense of disruption and potential confusion within the Debtors' organization and for the Debtors' employees, customers, and vendors. Further, the Debtors use a significant number and a wide variety of business forms in the ordinary course of their business operations. The Debtors therefore believe that it would be costly and disruptive to cease using all existing forms and to purchase and begin using new stationary and business forms. The Debtors respectfully submit that to do so would be unnecessary and that appropriate care can be taken to assure the proper use of the existing forms.

23. Notwithstanding the foregoing, upon the depletion of any pre-printed check stock and other business forms, the Debtors will obtain new check stock and business forms reflecting their status as debtors-in-possession, and with respect to checks which the Debtors or their agents print themselves, the Debtors will begin printing "Debtor-in-Possession" or "DIP" and the case number for these chapter 11 cases on such items within ten (10) days of the date of the entry of the Proposed Order.

C. The Court Should Waive the Deposit Requirements of Section 345(b) of the Bankruptcy Code on an Interim Basis

24. The Debtors request that the Court waive the requirements of section 345(b) of the Bankruptcy Code on an interim basis and permit them to maintain their deposits in their accounts in accordance with their existing deposit practices until such time as the Debtors obtain the Court's approval to deviate from the guidelines imposed under section 345(b) of the Bankruptcy Code on a final basis, to the extent necessary.

25. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will "yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department agent or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b).

26. A court may, however, relieve a debtor in possession of the restrictions imposed by section 345(b) of the Bankruptcy Code for "cause." 11 U.S.C. § 345(b). Local Rule 2015-2(b) provides that if a motion for a waiver of the restrictions imposed by section 345(b) "is filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on the debtor's motion can be held." Del. Bankr. L. R. 2015-2(b). As this Motion is being filed on the Petition Date and the Debtors have in excess of 200 creditors, the Debtors request that the Court enter an order waiving, on an interim basis,

for a period of thirty (30) days from the entry of the Proposed Order, the requirements of section 345(b) of the Bankruptcy Code.

27. The Debtors believe that they are in substantial compliance with the requirements of section 345(b) of the Bankruptcy Code because most, if not all, of the Bank Accounts are maintained at U.S. Trustee-approved depository institutions. Nevertheless, out of an abundance of caution, the Debtors request an interim waiver of the requirements of section 345(b) of the Bankruptcy Code to the extent such requirements are inconsistent with the Debtors' current practices. Given the complexity of the Debtors' Cash Management System and the relative security of the Cash Management System, the Debtors submit that cause exists to grant an interim waiver of the requirements of section 345(b) in the manner requested herein.

D. The Court Should Provide Administrative Priority Status to Post-Petition Intercompany Claims

28. As noted above, to facilitate operations, the Debtors engage in intercompany transfers between the Huntington Bank Operating Account and the Welded Michigan Construction, LLC Huntington Bank Account (collectively, the “**Intercompany Transfers**”). The Intercompany Transfers may result in intercompany receivables and payables to the extent that any such transfers occur on a post-petition basis (collectively, the “**Intercompany Claims**”).

29. To ensure that each individual Debtor will not, at the expense of its own creditors, fund the operations of an affiliated entity, the Debtors respectfully request that the Court, pursuant to section 503(b)(1) of the Bankruptcy Code, authorize the Debtors to treat any Intercompany Claims arising after the Petition Date in the ordinary course of business as administrative expenses. If the Court authorizes the Debtors to treat any Intercompany Claims as administrative expenses, then each entity utilizing funds flowing through the Cash Management

System and receiving services through intercompany arrangements should continue to bear the ultimate repayment responsibility for such ordinary course transactions and their related share of the cost of services provided.

30. The Debtors track all fund transfers and can ascertain, trace, and account for the Intercompany Transfers as needed. If the Intercompany Transfers were to be discontinued, the Cash Management System and the Debtors' operations could be unnecessarily disrupted to the detriment of the Debtors and their creditors and other stakeholders.

31. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of their estates and creditors.

SATISFACTION OF BANKRUPTCY RULE 6003

32. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." As set forth throughout this Motion, any disruption of the current Cash Management System would substantially diminish or impair the Debtors' efforts in these chapter 11 cases to preserve and maximize the value of their estates. Furthermore, there is no question that the Debtors' failure to pay or otherwise satisfy any outstanding fees on account of the Cash Management System would likely result in immediate and irreparable harm to the Debtors' business operations.

33. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied, and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

34. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any disruption in the current Cash Management System would be detrimental to the Debtors, their estates and creditors, and would impair the Debtors’ ability to optimize their business performance at this critical time as they begin the chapter 11 process.

35. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Order.

RESERVATION OF RIGHTS

36. Nothing in the Proposed Order or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action related to the Cash Management System or any of the Cash Management Banks, or (iv) shall be construed as a promise to pay a claim.

NOTICE

37. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors’ thirty (30) largest unsecured creditors (excluding insiders); (v) the Securities and Exchange Commission; (vi)

counsel to the Debtors' post-petition lenders; and (vii) the Cash Management Banks. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

38. The Debtors have not previously sought the relief requested herein from this or any other Court.

CONCLUSION

WHEREFORE, the Debtors request entry of the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 22, 2018
Wilmington, Delaware

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Proposed Counsel to the Debtors

EXHIBIT A

Proposed Order

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

)	
In re:)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (___)
)	
Debtors.)	(Jointly Administered)
)	Ref. Docket No. ___

**ORDER, PURSUANT TO SECTIONS 105(a), 345, 363, 1107(a) AND 1108
OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2015, AND
LOCAL RULE 2015-2, (I) AUTHORIZING AND APPROVING CONTINUED USE
OF CASH MANAGEMENT SYSTEM, (II) AUTHORIZING USE OF PREPETITION
BANK ACCOUNTS AND BUSINESS FORMS, (III) WAIVING THE REQUIREMENTS
OF SECTION 345(b) ON AN INTERIM BASIS, (IV) GRANTING ADMINISTRATIVE
EXPENSE STATUS TO POST-PETITION INTERCOMPANY CLAIMS,
AND (V) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order, pursuant to sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015 and Local Rule 2015-2, (i) authorizing and approving the Debtors’ continued use of their Cash Management System, (ii) granting the Debtors a waiver of the U.S. Trustee Guidelines, (iii) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors’ deposit practices on an interim basis, (iv) granting administrative expense status to post-petition intercompany claims, and (v) granting certain related relief; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and due and proper notice of the Motion having been given; and it

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

appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; 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, in their discretion, to: (i) designate, maintain, and continue to use, with the same account numbers, all of their bank accounts in existence on the Petition Date (collectively, the “**Bank Accounts**”), including, without limitation, those bank accounts identified in the Motion; (ii) use, in their present form, any and all checks and other documents related to the Bank Accounts; and (iii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession and to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as used prior to the Petition Date.
3. The Columbia Gas Segregated Account shall be maintained and used solely for any funds received from Columbia Gas under the Columbia Gas Agreement. All funds in the Columbia Gas Segregated Account will be and shall remain, at all times, the exclusive property of Columbia Gas, and any funds in the Columbia Gas Segregated Account shall be free from and shall not be encumbered by any liens or claims granted in connection with the Debtors’ use of cash collateral and post-petition financing or any other liens or

claims of any other party. Except with respect to the Leach Xpress Project Settlement Payment (as defined in the Columbia Gas Agreement), as such funds from the Columbia Gas Segregated Account are moved to the Huntington Bank Operating Account for disbursements, notwithstanding any comingling that may occur in the Huntington Bank Operating Account of such funds, until such disbursements are actually made those funds of Columbia Gas that were moved into the Huntington Bank Operating Account are and shall remain the separate property of Columbia Gas, and the Debtors shall only hold them in trust until disbursed.

4. In the event that the Debtors establish any other segregated accounts in connection with agreements with the Debtors' customers for the completion of the customers' projects, such additional segregated accounts (each, an "**Additional Customer Segregated Account**") shall be maintained and used solely for any funds received from such customers under the related agreements, and all funds in any Additional Customer Segregated Account will be and shall remain, at all times, the exclusive property of the related customer, and any funds in any Additional Customer Segregated Account shall be free from and shall not be encumbered by any liens or claims granted in connection with the Debtors' use of cash collateral and post-petition financing or any other liens or claims of any other party.

5. The Cash Management Banks participating in the Cash Management System are hereby authorized to continue to service and administer all of the Bank Accounts as accounts of the Debtors as debtors-in-possession without interruption and in the ordinary course in a manner consistent with any agreements between the Cash Management Banks and the Debtors that existed prior to the Petition Date, and to receive, process, honor, and pay

any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, such Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; provided, however, that any such checks, drafts, wires, or other electronic transfer requests issued by the Debtors before the Petition Date may be honored by any Cash Management Bank only if specifically authorized by order of this Court.

6. Except for those that comply with an order of this Court authorizing payment of certain prepetition claims, no checks, drafts, wires, or other electronic transfer requests drawn, issued, or requested on the Bank Accounts before the Petition Date but presented for payment after the Petition Date shall be honored or paid.

7. The operation of the Cash Management System in accordance with the Debtors' normal and customary practice is adequate and sufficient and may be continued on and after the Petition Date.

8. The Cash Management Banks participating in the Cash Management System shall not be liable to the Debtors or to their estates and shall not be deemed to be in violation of this Order for honoring a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures.

9. The Debtors are authorized to continue to use all their correspondence and business forms (including, without limitation, checks, invoices, letterhead, stationary, and purchase orders) existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession; provided, however, that upon the depletion of any

pre-printed check stock and other business forms, the Debtors will obtain new check stock and business forms reflecting their status as debtors-in-possession; provided further, however, that with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing “Debtor-in-Possession” or “DIP” and the case number for these chapter 11 cases on such items within ten (10) days of the date of the entry of this Order.

10. The Debtors are authorized to open any new bank accounts and close any of the Bank Accounts as the Debtors may deem necessary and appropriate; provided, however, that prior to opening any new bank accounts or closing any of the Bank Accounts, the Debtors shall provide notice of the Debtors’ intentions with respect thereto, as soon as reasonably practicable, to (i) the U.S. Trustee, (ii) counsel to the Debtors’ post-petition lenders, and (iii) counsel for any official committee appointed in these chapter 11 cases; provided further, however, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement (a “UDA”) with the U.S. Trustee, or at such banks that are willing to promptly execute such an agreement.

11. With regard to the Cash Management Banks that are party to a UDA with the U.S. Trustee, within fifteen (15) days from the date of the entry of this Order, the Debtors shall (a) contact each bank, (b) provide each bank with each of the Debtors’ employer identification numbers, and (c) identify each of their Bank Accounts held at such banks as being held by a debtor-in-possession.

12. With regard to the Cash Management Banks that are not a party to a UDA with the U.S. Trustee, within thirty (30) days from the date of the entry of this Order, the Debtors shall use their good-faith efforts to cause the bank to execute a UDA in a form prescribed by the U.S. Trustee. The U.S. Trustee’s rights to seek further relief from this

Court on notice in the event that the aforementioned banks are unwilling to execute a UDA in a form prescribed by the U.S. Trustee are fully reserved.

13. The requirements of section 345(b) of the Bankruptcy Code are suspended on an interim basis for a period of thirty (30) days from the entry of this Order, such that the Debtors are hereby permitted to maintain their deposits in their Bank Accounts in accordance with their existing deposit practices. This Order shall be without prejudice to the Debtors' rights to seek further relief from this Court with respect to such requirements or to seek approval from this Court to deviate from such requirements on a final basis.

14. The Cash Management Banks are hereby authorized to debit from the Bank Accounts ordinary course of business bank fees and charges without further order of this Court, provided that such fees and charges are authorized under the applicable account agreement with the Debtors, and provided further that nothing set forth herein shall authorize any of the Cash Management Banks to debit any claim or charges not in the ordinary course of business and not permitted under the applicable account agreements.

15. Within five (5) business days from the date of the entry of this Order, the Debtors shall (i) serve a copy of this Order on each Cash Management Bank and (ii) request that each Cash Management Bank internally code each of the Bank Accounts as "debtor-in-possession" accounts.

16. The Debtors are authorized on and after the Petition Date to engage in Intercompany Transfers in a manner consistent with their practices prior to the Petition Date; provided, however, that the Debtors may not make any intercompany transfers to non-Debtor affiliates or subsidiaries absent further order of this Court. Intercompany Claims are hereby granted administrative expense status pursuant to section 503(b)(1) of the Bankruptcy Code.

17. The Debtors shall, in the ordinary course of business, maintain accurate and detailed records of all transfers, including Intercompany Transfers, so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between pre-petition and post-petition transactions.

18. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action related to the Cash Management System or any of the Cash Management Banks, or (d) shall be construed as a promise to pay a claim.

19. Notwithstanding the Debtors' authorized use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each particular Debtor, regardless of which Debtor remits payment for those disbursements.

20. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of cash collateral and post-petition financing and any budget in connection therewith.

21. The Debtors are authorized to take any and all actions necessary to

effectuate the relief granted herein.

22. The requirements of Bankruptcy Rule 6003(b) are satisfied.

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

24. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October ____, 2018
Wilmington, Delaware

United States Bankruptcy Judge