

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 (KG)
))	
Debtors.))	(Jointly Administered)
))	
))	Ref. Docket Nos. 12 & 13

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

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), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code, authorizing, but not directing (i) the Debtors to pay certain pre-petition claims, conditioned upon prior customer payment, (ii) the Debtors to honor customer obligations in the ordinary course of business, (iii) to implement control procedures for customer project funding and completion, and (iv) authorizing banks and other financial institutions (the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing, and (v) granting related relief; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration and the Hawkins Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this

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.

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



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 that the Court may enter a final order herewith consistent with Article III of the U.S. Constitution; 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, but not directed, in their sole discretion, to enter into Customer Project Completion Agreements with some or all of the Customers without further order of the Court that require payments up to the following Pre-Petition Obligations Project Caps, provided that each Customer Project Completion Agreement contemplate post-petition payments to the Debtors equal to at least 100% of the amounts to be paid by the Debtors under any given Customer Completion Agreement:

Williams/ASR Project \$66.9 million.

2018 Consumers Project \$13.9 million.

3. The Debtors are authorized to enter into mutually acceptable control procedures with each Customer for Project funding and completion, including but not limited to the establishment of one or more segregated or escrowed bank accounts to hold funds held for funds obtained from Customers under Customer Completion Agreements pending the disbursement of such funds in accordance with this order and the Customer Completion Agreements.

4. To the extent provided for under any Customer Completion Agreement, the Debtors are authorized to pay post-petition Critical Customer Obligations in advance or to modify trade terms with counterparties as necessary in the Debtors' discretion.

5. Further Court approval of any Customer Project Completion Agreement entered into between the Debtors and a Customer is not required, but to the extent the Debtors or a Customer desires Court approval of a Customer Project Completion Agreement, the Debtors may submit such stipulation under certification of counsel for expedited approval.

6. The DIP Liens shall not encumber any amounts received by Customers and held in escrow on account of any funding of a Project under the terms of any Customer Project Completion Agreement.

7. The Customer Project Completion Agreements shall be valid and enforceable against any trustee appointed in the chapter 11 cases, upon the conversion of any of the chapter 11 cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any "Successor Cases"), or upon the dismissal of any of the chapter 11 cases or Successor Cases.

8. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors should be honored pursuant to this Order, and any such Bank shall not

have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

9. Except as may be expressly set forth in a Customer Project Completion Agreement, nothing in this Order, nor as a result of any payment made pursuant to 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 in these chapter 11 cases, (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 be construed as a promise to pay a claim.

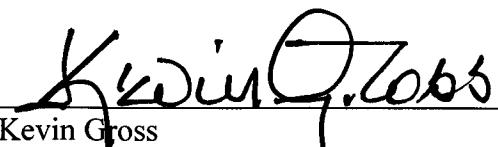
10. The provisions of this Order shall be binding upon and inure to the benefit of the Customers, the Debtors and each of their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the chapter 11 cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 Case.

11. Bankruptcy Rule 6003(b) has been satisfied.

12. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Order.

13. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: October 23, 2018
Wilmington, Delaware



Kevin Gross
United States Bankruptcy Judge

EXHIBIT 1

Form Stipulation

[FORM] CUSTOMER PROJECT COMPLETION AGREEMENT

This Stipulation is entered into by and between, on the one hand, _____ (the "Customer"), and, on the other hand, Welded Construction, L.P. (the "Debtor" and with the Customer, the "Parties"), with respect to the following recitals:

WHEREAS, Customer has hired Debtor for _____ (the "Project");

WHEREAS, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has entered that certain *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* [Docket No. ____] (the "Order");

WHEREAS, the Parties desire to work together in good faith in accordance with the revised terms of the contract between the parties as modified by this Stipulation to ensure mechanical completion of the Project;

WHEREAS, the Parties without waiving or releasing any claims or defenses associated with or relating to the Project except as set forth herein, have entered into this Stipulation to ensure the Debtors maintain sufficient resources to compensate unpaid Sub-Contractors and timely complete the Project;

NOW THEREFORE, in consideration of the foregoing recitals, the agreements set forth below and the mutual obligations and commitments of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated as if fully set forth herein.

2. **The Contract Documents.** The parties contract documents consist of this Stipulation and [_____] (the "Original Contract") and together with this Stipulation, collectively the "Contract Documents"). The Contract Documents represent the entire and integrated agreement between the Parties hereto and supersede prior negotiations, representations, or agreements, either written or oral. This Stipulation modifies and amends the other Contract Documents as set forth herein, and in the event of any conflict or inconsistency between the other Contract Documents and this Stipulation, this Stipulation shall govern and control.

3. **Payment Procedures.** [To be agreed by Parties, subject to terms of the Order approving this Stipulation]

4. **Payment of Critical Customer Obligations.** Notwithstanding anything to the contrary herein, the Debtors reserve their rights to pay the Critical Customer Obligations in

advance or to modify trade terms with such counterparties as necessary in the Debtors' discretion.

5. **Schedule for Completion of the Work.** As additional consideration for payment of the Customer's funds, the Debtor agrees to continue work on the Project so as to allow for completion of the items reflected on Schedule A by _____ ("Debtor's Work"). Upon completion of Debtor's Work, Customer assumes all of Debtor's obligations under the Contract Documents (including, without limitation, remaining cleanup and permit obligations) and Debtor shall have no further obligations to Customer under the Contract Documents or otherwise.

6. **Additional Amendments.** In addition to the other amendments provided herein, the Parties agree to amend the Original Contract as further set forth on Schedule B to this Stipulation.

7. **Reservation of Rights.** By executing the Stipulation, neither Party, or its surety, waives or releases any claim, action, cause of action, demand, suit, debt, sum of money, covenant, contract, agreement, judgment, promise, expense, cost, back-charge, or right that the Party has or may have, whether under contract, common law, statute, or any other theory of law or equity, that the Party has or may have relating to the Project except as set forth herein.

8. **No Admission of Liability.** The Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, or deemed to be evidence of, an admission or concession on the part of any Party of any fact, liability, or wrongdoing by any Party.

9. **No Presumption against the Drafter.** The Parties agree that this Stipulation was negotiated and drafted jointly by the Parties and that no inferences or presumptions regarding the interpretation of this Stipulation shall be drawn or made by or against any Party as the author of this Stipulation.

10. **Governing Law.** This Stipulation and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of Delaware, and the Bankruptcy Court shall have exclusive jurisdiction over any dispute arising from or related to the Contract Documents during the pendency of the Debtors' bankruptcy cases.

11. **Application of this Stipulation.** This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and any successors. Nothing in this Stipulation is intended nor shall be construed to confer any benefit whatsoever on any person or entity other than the Parties expressly named herein, and no rights and remedies hereunder may be assigned by any Party without the prior written consent of the other Party, which shall not be unreasonably withheld.

12. **Effective Date.** This Stipulation shall become effective as of the date of the latter of: its last execution by the authorized representatives of all of the Parties or, to the extent necessary, the approval of the Bankruptcy Court.

13. **Headings.** The headings of the various paragraphs of this Stipulation have been included only to make it easier to locate the subject matter covered by each provision and are not to be used in construing this Stipulation or in ascertaining its meaning.

14. **Capitalized Terms.** Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Original Contract.

15. **Contract Continues to Govern.** Except as otherwise expressly modified or amended herein, the rights and liabilities of the Parties shall continue to be governed by the Contract Documents.

16. **Partial Invalidity.** If any provision of this Stipulation or any portion of any provision of this Stipulation is declared null and void or unenforceable by any court or tribunal having jurisdiction, then such provision or such portion of a provision shall be considered separate and apart from the remainder of this Stipulation, which shall remain in full force and effect.

17. **Counterparts.** This Stipulation may be executed simultaneously or in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Stipulation. Facsimile, photocopy, PDF, or other copied signatures shall be considered as original signatures for all purposes.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Stipulation to be executed by their respective dully authorized representatives as of the date in the heading of this Stipulation.

[SIGNATURE PAGES FOLLOW]

SCHEDULE A TO STIPULATION

DEBTOR'S WORK

SCHEDULE B TO STIPULATION

ADDITIONAL CONTRACT AMENDMENTS