

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

----- X
In re: : Chapter 11
: :
HI-CRUSH INC., *et al.*,¹ : Case No. 20- 33495 (DRJ)
: :
Debtors. : (Jointly Administered)
: :
----- X

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 13, 2020 AT 3:30 P.M. PREVAILING CENTRAL TIME IN COURTROOM 400, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TX 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN JULY 13, 2020.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



Please note that on March 24, 2020, through the entry of General Order 2020-10, the Court invoked the Protocol for Emergency Public Health or Safety Conditions.

It is anticipated that all persons will appear telephonically and also may appear via video at this hearing.

Audio communication will be by use of the Court's regular dial-in number. The dial-in number is +1 (832) 917-1510. You will be responsible for your own long-distance charges. You will be asked to key in the conference room number. Judge Jones' conference room number is 205691.

Parties may participate in electronic hearings by use of an internet connection. The internet site is www.join.me. Persons connecting by mobile device will need to download the free [join.me](http://www.join.me) application.

Once connected to www.join.me, a participant must select "join a meeting". The code for joining this hearing before Judge Jones is "judgejones". The next screen will have a place for the participant's name in the lower left corner. Please complete the name and click "Notify".

Hearing appearances should be made electronically and in advance of the hearing. You may make your electronic appearance by:

- 1) Going to the Southern District of Texas website;
- 2) Selecting "Bankruptcy Court" from the top menu;
- 3) Selecting "Judges' Procedures & Schedules;"
- 4) Selecting "view home page" for Judge David R. Jones;
- 5) Under "Electronic Appearance," select "Click here to submit Electronic Appearance;"
- 6) Select "Hi-Crush Inc., et al." from the list of Electronic Appearance Links; and
- 7) After selecting "Hi-Crush Inc., et al." from the list, complete the required fields and hit the "Submit" button at the bottom of the page.

Submitting your appearance electronically in advance of the hearing will negate the need to make an appearance on the record at the hearing.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") respectfully state the following in support of this emergency motion (the "**Motion**"):

RELIEF REQUESTED

1. By this Motion, the Debtors request entry of an order (the "**Order**"), substantially in the form attached hereto:

- (i) authorizing, but not directing, the Debtors to pay any prepetition tax and fee obligations consisting of international taxes, income taxes, franchise taxes, property taxes, sales and use taxes, regulatory and license fees, and any other taxes and fees

for which the Debtors' directors and officers may be liable or which may not constitute property of the Debtors' estates and any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes and fees (collectively, the "**Taxes and Fees**")² owing to those (i) international, federal, state, and local governmental entities listed on Exhibit A attached hereto (the "**Taxing Authorities**") and (ii) Debtor Hi-Crush Inc., Debtor D & I Silica, LLC ("**D & I**"), or any other Debtor as reimbursement for Taxes and Fees paid by such Debtors on behalf of the other Debtors;

- (ii) authorizing the Debtors' banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations in connection with the Taxes and Fees approved herein, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments;
- (iii) authorizing the Debtors to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that holders of claims in connection with the Taxes and Fees may incur as a result of any bank's failure to honor a prepetition check; and
- (iv) authorizing the Debtors, in their sole discretion, to amend Exhibit A to add or remove any Taxing Authorities to the extent that the Debtors subsequently identify any additional governmental or quasi-governmental entities to which the Debtors owe Taxes and Fees.³

2. The Debtors estimate that approximately \$3.98 million in Taxes and Fees have accrued and remain unpaid as of the Petition Date. Although the Debtors believe that they are substantially current with respect to their payment of Taxes and Fees, the Debtors seek authority

² The Debtors incur various taxes related to their employees and are separately required to withhold certain amounts from each employee's paycheck on account of things such as social security and FICA. Such payroll, withholding and other employee-related tax obligations are separately addressed in the Debtors' Emergency Motion for Entry of an Order (I) Authorizing (A) Payment of Prepetition Workforce Obligations and (B) Continuation of Workforce Programs on a Postpetition Basis, (II) Authorizing Payment of Payroll Taxes, (III) Confirming the Debtors' Authority to Transmit Payroll Deductions, (IV) Authorizing Payment of Prepetition Claims Owing to Administrators, and (V) Directing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments, filed contemporaneously herewith.

³ Although Exhibit A is intended to be comprehensive, the Debtors may have inadvertently omitted certain taxing authorities from Exhibit A. By this Motion, the Debtors request relief with respect to Taxes and Fees payable to all taxing authorities regardless of whether such authority is specifically identified on Exhibit A.

pursuant to this Motion to make such payments where: (a) Taxes and Fees accrued or were incurred prepetition, but were not paid prepetition, or were paid in an amount less than actually owed; (b) all or a portion of the Taxes and Fees paid prepetition were lost or otherwise not received by any of the Taxing Authorities; or (c) Taxes and Fees incurred for prepetition periods may become due after the commencement of these Chapter 11 Cases.

3. For the avoidance of doubt, the requested authorization would be discretionary, allowing the Debtors, among other things, to elect to pay Taxes and Fees as to which the Debtors' officers and directors may have personal liability in the event of nonpayment by the Debtors before other Taxes and Fees. In addition, the requested authorization would be without prejudice to the Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate and would extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

4. As set forth below, the Taxes and Fees at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the personal liability theory or the doctrine of necessity. By paying the Taxes and Fees in the ordinary course of business, as and when due, the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by the Taxing Authorities as they attempt to enforce their rights to collect Taxes and Fees.

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core

proceeding under 28 U.S.C. § 157(b), and this Court may enter a final order consistent with Article III of the United States Constitution.

6. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

8. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, (the “**First Day Declaration**”),⁴ which is filed with the Court concurrently herewith and is fully incorporated herein by reference.

9. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

10. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

BASIS FOR RELIEF

11. Prior to the Petition Date, the Debtors incurred obligations to international, federal, state, and local governments. As of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees. Certain Taxes and Fees attributable to the prepetition period, however, may not yet have become due. Certain prepetition Taxes and Fees may not be due until the applicable monthly, quarterly, or annual payment dates—in some cases immediately and in others not until next year. In 2019, the Debtors incurred approximately \$9.82 million on account of Taxes and Fees. As of the Petition Date, the Debtors estimate that they have accrued liabilities, which are not yet due, in the approximate amount of \$3.98 million on account of Taxes and Fees.

12. The Taxes and Fees accrued prior to the Petition Date are summarized in further detail below:

Category	Description	Estimated Amount
Franchise and Business Taxes	Taxes required to conduct business in the ordinary course, including the Commercial Activity Tax (“ CAT ”).	\$320,000
Income Taxes	Taxes imposed on the Debtors’ income and that are required to conduct business in the ordinary course.	\$0
Property Taxes	Taxes and obligations related to real and personal property holdings.	\$3,000,000
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$660,000
Government Regulatory Taxes/Licensing Fees	Taxes and obligations related to regulatory fees and the granting of licenses that are required to conduct business in the ordinary course.	\$0

13. In the ordinary course of business, Debtors Hi-Crush Inc. and D & I pay certain Taxes and Fees on behalf of the other Debtors. Such payments are recorded in Hi-Crush Inc.'s or D & I's books as intercompany receivables and are recorded in the other Debtors' books as intercompany payables. The Debtors request authority, in their discretion, to reimburse Debtors Hi-Crush Inc., D & I, and any other Debtor that may pay Taxes and Fees on account of another Debtor for such amounts in the ordinary course of business.⁵

14. The continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process. If such obligations are not timely paid, the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws, including whether (i) the obligations are priority, secured, or unsecured in nature, (ii) the obligations are pro-ratable or fully prepetition or postpetition, and (iii) penalties, interest, attorneys' fees and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees and costs are priority, secured or unsecured in nature.

15. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable pursuant to applicable federal, state, or local laws in the event of nonpayment. If any such taxes or fees remain unpaid, the Debtors' officers and directors may be subject to lawsuits or even criminal prosecution

⁵ The relief sought in this Motion with respect to the payment of intercompany claims is duplicative of the relief sought in the *Debtors' Emergency Motion for Entry of Order (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit and Investment Practices, (III) Approving the Continuation of Intercompany Transactions, and (IV) Granting Administrative Expense Status to Certain Postpetition Intercompany Claims*, filed contemporaneously herewith.

on account of such nonpayment during the pendency of the Chapter 11 Cases. In such event, collection efforts by the Taxing Authorities would distract the Debtors' officers and directors from their focus on these Chapter 11 Cases.

16. Although the Debtors believe that all international, federal, state, and local governmental and quasi-governmental entities to which the Debtors may be liable are described herein and listed on Exhibit A, it is possible that other Taxes and Fees owed to additional entities may be uncovered by the Debtors subsequent to the filing of this Motion. Accordingly, the Debtors request authority, in their sole discretion, to amend Exhibit A to add or delete any governmental or quasi-governmental entity as appropriate. To the extent that the Debtors subsequently identify any additional governmental or quasi-governmental entities to which the Debtors owe Taxes and Fees, the Debtors propose to add such entities to Exhibit A and to have the terms of the Order apply to any such entity. The Debtors will serve on any of the subsequently identified entities a copy of this Motion and the Order entered with respect to the Motion, along with an amended Exhibit A that includes such entity.

17. Certain of the Taxing Authorities may not have been paid or may have been sent checks and/or fund transfers for Taxes and Fees that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, Taxes and Fees have accrued or are accruing, but have not yet become due and payable and, thus, any checks or fund transfers will be issued on a postpetition basis. Accordingly, the Debtors request entry of the Order authorizing their banks and other financial institutions to receive, process, honor, pay and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, issued by the Debtors in payment of Taxes and Fees that had not been honored and paid as of the Petition Date

and authorizing the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

APPLICABLE AUTHORITY

A. The Majority of the Taxes and Fees Are Entitled to Payment Prior to Prepetition, Non-Priority Unsecured Claims

18. To the extent that the Taxes and Fees are priority claims pursuant to section 507(a)(8) of the Bankruptcy Code or secured claims pursuant to section 506(a) of the Bankruptcy Code, their payment should be authorized on the basis that (i) they are required to be paid in full as a condition to satisfying the plan confirmation requirements contained in section 1129 of the Bankruptcy Code, or (ii) they would be entitled to payment before any prepetition non-priority unsecured claim.

19. If the Taxes and Fees are deemed priority claims, section 1129(a)(9)(C) of the Bankruptcy Code requires that they be paid no less favorably than through regular installment payments, over a period not exceeding five years after the Petition Date, of a total value as of the effective date of the plan equal to the allowed amount of each such claim. *See* 11 U.S.C. § 1129(a)(9)(C).

20. If the Taxes and Fees are deemed secured claims that would (but for such secured status) fall under the rubric of section 507(a)(8) of the Bankruptcy Code, section 1129(a)(9)(D) of the Bankruptcy Code requires that they be paid no less favorably than through regular installment payments, over a period not exceeding five years after the Petition Date, of a total value as of the effective date of the plan equal to the allowed amount of each such claim. *See* 11 U.S.C. § 1129(a)(9)(D) (referring back to 11 U.S.C. § 1129(a)(9)(C)). Otherwise, section

1129(b)(2)(A) of the Bankruptcy Code requires that they be satisfied through deferred cash payments totaling at least the allowed amount of each such claim, of a value, as of the effective date of the plan, equal to the value of the collateral securing the claim, with a continuation of the liens against the collateral; or, if the collateral is to be sold, that the lien securing the claim attach to the proceeds of sale; or that the holder realize the indubitable equivalent of the claim. *See* 11 U.S.C. § 1129(b)(2)(A); *see also Fed. Home Loan Mortg. Corp. v. Bugg (In re Bugg)*, 172 B.R. 781, 785 (E.D. Pa. 1994) (“The ‘fair and equitable’ standard requires that a secured claim holder retain its lien and receive deferred cash payments totaling [sic] at least the allowed amount of the claimant’s secured claim and a present value equal to the value of its collateral.”).

21. Because of the likelihood that the vast majority of the Taxes and Fees constitute priority claims under section 507(a)(8) of the Bankruptcy Code, the Debtors’ payment of the Taxes and Fees now, in all likelihood, will affect only the timing of the payments and not the amounts to be received by the Taxing Authorities (or Hi-Crush Inc. or D & I as reimbursement from the other Debtors). Moreover, by paying legitimate tax claims now, the Debtors will avoid any unnecessary fees, interest or penalties that might otherwise be asserted. Other creditors and parties in interest, therefore, will not be prejudiced if the relief sought herein is granted by this Court.

B. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Support Payment of the Taxes and Fees

22. Alternatively, authorization to pay the Taxes and Fees is appropriate under the “doctrine of necessity,” which is grounded in section 105(a) of the Bankruptcy Code. Section 105(a) provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of this section is to grant bankruptcy courts the authority to take actions necessary to exercise their power under the Bankruptcy Code.

23. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment and thereafter approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season);⁶ *see also In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor’s business); *In re CoServ, L.L.C.*, 273 B.R. 497, 497 (Bankr. N.D. Tex. 2002) (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor in possession to pay prepetition claims); *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (“The Third Circuit has adopted the ‘necessity of payment’ doctrine.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”).

C. Section 363 of the Bankruptcy Code Supports Payment of the Taxes and Fees

24. This Court may also authorize the Debtors to pay Taxes and Fees under section 363(b) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and a hearing, may

⁶ The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport Railway Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309-14. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the continued operation of the [debtor] in serious jeopardy.”).

use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business upon a finding that such use is supported by sound business reasons. *See, e.g., In re BNP Petrol Corp.*, 642 F. App’x 429, 434-35 (5th Cir. 2016) (citing *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”)); *see also ASARCO, Inc. v. Elliott Mgmt (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”).

25. The relief requested herein easily satisfies the foregoing standards. Failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtors, will make the Debtors’ estates worse off than they will be having paid the Taxes and Fees. It is in the best interest of the Debtors’ estates that the Taxes and Fees be paid on time so as to avoid administrative difficulties. Failure to timely pay, or a precautionary withholding by the Debtors of payment of, the Taxes and Fees may cause the Taxing Authorities to take precipitous action, including an increase in audits, a flurry of lien filings and significant administrative maneuvering at the expense of the Debtors’ time and resources. Prompt and regular payment of the Taxes and Fees will avoid this unnecessary governmental action.

D. Certain Taxes and Fees May Not Be Property of the Estate

26. Certain of the Taxes and Fees may constitute so-called “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to the Taxing

Authorities. *See, e.g.*, 26 U.S.C. § 7501; Tex. Tax Code Ann. § 111.016(a) (Vernon 2007) (“Any person who receives or collects a tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the state and is liable to the state for the full amount collected plus any accrued penalties and interest on the amount collected.”). Such taxes are not considered property of the estates under section 541(d) of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 63-67 (1990) (trust fund taxes are not property of estate); *see also In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims.”); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 96 (3d Cir. 1994) (withheld taxes were subject to a trust); *Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas. Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1061-62 (3d Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of the debtor’s estate); *Shank v. Wash. State Dep’t of Revenue, Excise Tax Div. (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is “trust fund” tax); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); *In re Al Copeland Enters., Inc.*, 133 B.R. 837, 841-42 (Bankr. W.D. Tex. 1991) (debtor obligated to pay Texas sales taxes plus interest because such taxes were “trust fund” taxes), *aff’d*, 991 F.2d 233 (5th Cir. 1993). The Debtors, therefore, arguably have no equitable interest in the Taxes and Fees that are trust fund taxes and are obligated to pay over the collected amounts.

E. The Debtors’ Officers and Directors May Be Personally Liable for Non-Payment of Certain Taxes and Fees

27. Additionally, under the laws of many states, officers and directors may be held directly or personally liable for the nonpayment of certain types of taxes. It is in the best interest of the Debtors’ estates and consistent with the reorganization policy of the Bankruptcy Code to

eliminate the possibility that officers and directors will become subject to time-consuming and potentially damaging distractions.

28. The Chapter 11 Cases are complicated due to, among other things, the nature and geographic scope of the Debtors' businesses, and the Debtors' focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In this context, the payment of the Taxes and Fees is insignificant and will have no meaningful effect on the recoveries of creditors in the Chapter 11 Cases, particularly in view of the priority or secured status of a significant portion of such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address disputes with the Taxing Authorities that are unnecessary and wasteful of the resources of the Debtors and this Court.

F. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

29. The Debtors have sufficient funds to pay any amounts related to the Taxes and Fees in the ordinary course of business. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Taxes and Fees. The Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Accordingly, the Debtors request that the Court authorize and direct all banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or rerequest postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations in connection with the Taxes and Fees upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to

cover such payments. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that the Authorities may incur as a result of any bank's failure to honor a prepetition check.

EMERGENCY CONSIDERATION

30. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of the Chapter 11 Cases. As discussed in detail above and in the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted, as among other things, the Taxing Authorities could initiate audits, seek to suspend operations, file liens, or seek to lift the automatic stay. Thus, failure to receive the applicable relief during the first twenty-one (21) days of the Chapter 11 Cases would severely disrupt the Company's operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 as well as the requirements of Bankruptcy Local Rule 9013-1(i) and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

BANKRUPTCY RULE 6004 SHOULD BE WAIVED

31. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately

necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

32. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Order once entered. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

33. Notice of this Motion will be given to: (i) the United States Trustee for the Southern District of Texas; (ii) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (iii) Simpson Thacher & Bartlett LLP, as counsel to the agent for the Debtors' prepetition and postpetition secured asset-based revolving credit facility; (iv) U.S. Bank National Association, as indenture trustee for the Debtors' prepetition notes; (v) counsel to that certain ad hoc group of holders of prepetition senior notes (the "**Ad Hoc Group**")

(a) Paul, Weiss, Rifkind, Wharton & Garrison LLP and (b) Porter Hedges LLP; (vi) Shipman & Goodwin LLP as counsel to the agent under the Debtors' postpetition term loan facility; (vii) the United States Attorney's Office for the Southern District of Texas; (viii) the Taxing Authorities; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) the state attorneys general for states in which the Debtors conduct business; and (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

34. A copy of this Motion is available on (i) the Court's website: www.txs.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at www.kccllc.net/hicrush.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Signed: July 12, 2020
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)
Ashley L. Harper (TX Bar No. 24065272)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Tel: 713-220-4200
Fax: 713-220-4285
Email: taddavidson@HuntonAK.com
ashleyharper@HuntonAK.com

-and-

George A. Davis (*pro hac vice* admission pending)
Keith A. Simon (*pro hac vice* admission pending)
David A. Hammerman (*pro hac vice* admission pending)
Annemarie V. Reilly (*pro hac vice* admission pending)
Hugh K. Murtagh (*pro hac vice* admission pending)
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Tel: 212-906-1200
Fax: 212-751-4864
Email: george.davis@lw.com
keith.simon@lw.com
david.hammerman@lw.com
annemarie.reilly@lw.com
hugh.murtagh@lw.com

Proposed Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on July 12, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II

EXHIBIT A**List of Taxing Authorities**

AUTHORITY	ADDRESS	FEDERAL/ STATE/COUNTY/CITY/ FOREIGN	DESCRIPTION
California Franchise Tax Board	PO Box 942857 Sacramento, CA 94257-0500	State	Franchise and Business Taxes
Colorado Secretary of State	1700 Broadway, Suite 200 Denver, CO 80290	State	Franchise and Business Taxes
Louisiana Department of Revenue	617 N 3rd St Baton Rouge, LA 70802	State	Franchise and Business Taxes
New York Department of State	Division of Corporations One Commerce Plaza 99 Washington Avenue Albany, NY 12231	State	Franchise and Business Taxes
North Dakota Secretary of State	600 E Boulevard Avenue Dept 108 Bismarck, ND 58505-0500	State	Franchise and Business Taxes
Province of British Columbia	200 - 940 Blanshard Street Victoria, BC V8W 3E6 Canada	Foreign	Franchise and Business Taxes
State of Delaware	16192 Coastal Hwy Lewes, DE 19958	State	Franchise and Business Taxes
The Province of Manitoba	Manitoba Finance Taxation Division 101 - 401 York Avenue Winnipeg, MB R3C 0P8 Canada	Foreign	Franchise and Business Taxes
West Virginia Secretary of State	1900 Kanawha Blvd E Charleston, WV 25305	State	Franchise and Business Taxes
Wisconsin Department of Financial Institutions	4822 Madison Yards Way Madison, WI 53705	State	Franchise and Business Taxes
Wyoming Secretary of State	Herschler Building East 122 W 25th St Suites 100 and 101 Cheyenne, WY 82002	State	Franchise and Business Taxes
Canada Revenue Agency	333 Laurier Avenue West Ottawa, ON K1A 0LN Canada	Foreign	Income Tax
Internal Revenue Service	Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346	Federal	Income Tax
City of Augusta	145 West Lincoln Street Augusta, WI 54722	City	Property Tax
City of Independence Treasurer	23688 Adams St. Independence, WI 54747	City	Property Tax

AUTHORITY	ADDRESS	FEDERAL/ STATE/COUNTY/CITY/ FOREIGN	DESCRIPTION
City of Whitehall Treasurer	18620 Hobson Street PO Box 155 Whitehall, WI 54773	City	Property Tax
Eau Claire County Treasurer	Glenda J Lyons 721 Oxford Ave Eau Claire, WI 54703-5478	County	Property Tax
Ector County Appraisal District	1301 E 8th Street Odessa, TX 79761	County	Property Tax
Ector County Tax Assessor	1010 E 8th Street #100 Odessa, TX 79761	County	Property Tax
Harris County Tax Collector	Attn: Ann Harris Bennett 1001 Preston St. Houston, TX 77002	County	Property Tax
Hood Central Appraisal District	PO Box 819 1902 West Pearl Street Granbury, TX 76048	County	Property Tax
Howard County Tax Office	Diane Carter TAC PO Box 1111, 315 South Main Big Spring, TX 79721	County	Property Tax
Jackson County Treasurer	307 Main Street Black River Falls, WI 54615	County	Property Tax
Midland Central Appraisal District	4631 Andrews Hwy PO Box 908002 Midland, TX 79708	County	Property Tax
Monroe County Treasurer	202 S K Street Room 3 Sparta, WI 54656	County	Property Tax
Reeves County Tax Assessor	100 E 4th Street #104 Pecos, TX 79772	County	Property Tax
Smithfield Borough Tax Collection	14 Water St. Smithfield, PA 15478	City	Property Tax
Smithfield Township	320 Smithfield-Highhouse Road Smithfield, PA 15478	City	Property Tax
The City of Blair	122 S. Urberg St. Box 147 Blair, WI 54616	City	Property Tax
Town of Arcadia Treasurer	W26051 State Road 95 Arcadia, WI 54612	City	Property Tax
Town of Bridge Creek	Town of Bridge Creek Attn: Dawn Werlein E22735 County Road G Augusta, WI 54722	City	Property Tax
Town Of Byron	Anna Krueger - Treasurer 33486 Driftwood Ave Warrens, WI 54666	City	Property Tax
Town of Preston	N29383 County Road D Blair, WI 54616	City	Property Tax

AUTHORITY	ADDRESS	FEDERAL/ STATE/COUNTY/CITY/ FOREIGN	DESCRIPTION
Town of Springfield	W15716 County Rd P Taylor, WI 54659	City	Property Tax
Trempealeau County Treasurer	Room 110 36245 Main Street P.O. Box 67 Whitehall, WI 54773	County	Property Tax
Village of Wyeville	Joan Sutherland - Treasurer 209 Second St Wyeville, WI 54660	City	Property Tax
Wellsboro Area School District	District Administrative Office 227 Nichols Street Wellsboro, PA 16901	City	Property Tax
Winkler County Tax Assessor-Collector's Office	100 E Winkler St 1st floor Kermit, TX 79745	County	Property Tax
City of Whitehall	36295 Main Street PO Box 155 Whitehall, WI 54773	City	Regulatory / Licensing Fees
Colorado Department of Revenue	1375 Sherman Street Denver, CO 80261	State	Regulatory / Licensing Fees
E-470 Public Highway Authority	22470 E. Stephen D. Hogan Parkway, Suite 100 Aurora, CO 80018	State	Regulatory / Licensing Fees
Eau Claire County Land Conservation Division	721 Oxford Ave., Suite 3344 Eau Claire, WI 54703	County	Regulatory / Licensing Fees
Financial Accounting Standards Board	401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116	Federal	Regulatory / Licensing Fees
Monroe County	Land Conservation Department 820 Industrial Drive Suite 3 Sparta, WI 54656	County	Regulatory / Licensing Fees
New Mexico Audit and Compliance Division	1100 South St. Francis Drive Santa Fe, NM 87504	State	Regulatory / Licensing Fees
Oakdale Fire Department	412 McCaul St. Tomah, WI 54660	City	Regulatory / Licensing Fees
Pennsylvania Department of Agriculture - Weights and Measures	2301 North Cameron Street Harrisburg, PA 17110	State	Regulatory / Licensing Fees
Public Company Accounting Oversight Board	1666 K Street NW Washington, DC 20006- 2803	Federal	Regulatory / Licensing Fees
Southwest Regional Tax Bureau	One Centennial Way Scottsdale, PA 15683	County	Regulatory / Licensing Fees
Texas Department of Agriculture	1700 N. Congress, 11th Floor Austin, TX 78701	State	Regulatory / Licensing Fees
United States Department of Labor, Mine Safety and Health Administration	201 12th St S Suite 401 Arlington, VA 22202-5450	Federal	Regulatory / Licensing Fees

AUTHORITY	ADDRESS	FEDERAL/ STATE/COUNTY/CITY/ FOREIGN	DESCRIPTION
United States Department of Treasury	Mine Safety & Health Administration PO Box 790390 St. Louis, MO 63179-0390	Federal	Regulatory / Licensing Fees
Wisconsin Department of Agriculture	Trade and Consumer Protection 2811 Agriculture Dr Madison, WI 53718	State	Regulatory / Licensing Fees
Wisconsin Department of Natural Resources	101 S. Webster Street PO Box 7921 Madison, WI 53707-7921	State	Regulatory / Licensing Fees
Wisconsin Department of Safety and Professional Services	4822 Madison Yards Way Madison, WI 53705	State	Regulatory / Licensing Fees
Wisconsin Department of Safety and Public Services	4822 Madison Yards Way Madison, WI 53705	State	Regulatory / Licensing Fees
Wisconsin Department of Transportation	Hill Farms State Office Building 4822 Madison Yards Way Madison, WI 53705	State	Regulatory / Licensing Fees
Colorado - Tax Auditing and Compliance Division	Dept of Rev. State Capitol Annex 1375 Sherman Street Room 634 Denver, CO 80261	State	Sales & Use Tax
Commonwealth of Pennsylvania	2301 North Cameron Street Harrisburg, PA 17110	State	Sales & Use Tax
New Mexico Taxation and Revenue Department	1100 South St. Francis Drive Santa Fe, NM 87504	State	Sales & Use Tax
New York Department of Taxation and Finance	Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	State	Sales & Use Tax
Ohio Department of Taxation	4485 Northland Ridge Blvd. Columbus, OH 43229	State	Sales & Use Tax
Ohio Treasurer of State	30 E Broad St 9th Floor Columbus, OH 43215	State	Sales & Use Tax
Oklahoma Tax Commission	2501 North Lincoln Boulevard Oklahoma City, OK 73194	State	Sales & Use Tax
Pennsylvania Department of Revenue	1133 Strawberry Square Fourth and Walnut St. Dept. 281100 Harrisburg, PA 17128	State	Sales & Use Tax
State of North Dakota - Office of State Tax Commissioner	Voluntary Disclosure 600 E. Boulevard Avenue, Dept 127 Bismarck, ND 58505	State	Sales & Use Tax
State of West Virginia - State Tax Department	1124 Smith St Charleston, WV 25301	State	Sales & Use Tax

AUTHORITY	ADDRESS	FEDERAL/ STATE/COUNTY/CITY/ FOREIGN	DESCRIPTION
State of Wyoming- Department of Revenue	Herschler Building - 2-West 122 W 25th Street Cheyenne, WY 82002	State	Sales & Use Tax
Texas Comptroller of Public Accounts	111 E 17th Street Austin, TX 78774	State	Sales & Use Tax
Wisconsin Department of Revenue	State Board of Assessors MS 6-97, 2135 Rimrock Rd. Madison, WI 53713	State	Sales & Use Tax
Ohio Business Tax Division	4485 Northland Ridge Blvd. Columbus, OH 43229	State	Sales & Use Tax and Franchise and Business Taxes
City of Evans	Business and Sales Tax Licensing 1100 37th St Evans, CO 80620	City	Sales & Use Tax and Regulatory / Licensing Fees

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

	X	
In re:	:	Chapter 11
	:	
HI-CRUSH INC., <i>et al.</i> , ¹	:	Case No. 20- 33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES

[Relates to Motion at Docket No. ____]

Upon the motion (the “**Motion**”)² of the Debtors for an Order authorizing the Debtors, in their sole discretion, to pay amounts owed on account of prepetition Taxes and Fees to the Taxing Authorities and the other Debtors; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and all objections, if any, to entry of this

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

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

Order having been withdrawn, resolved, or overruled; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

ORDERED THAT:

1. The Debtors are authorized, but not directed, in their sole discretion, to pay to the Taxing Authorities or the other Debtors all Taxes and Fees relating to the period prior to the commencement of their Chapter 11 Cases (the “**Petition Date**”), solely to the extent that such Taxes and Fees become payable in accordance with applicable law. Such Taxes and Fees are summarized in further detail in the chart below.

Category	Description	Estimated Amount
Franchise and Business Taxes	Taxes required to conduct business in the ordinary course, including the Commercial Activity Tax (“ CAT ”).	\$320,000
Income Taxes	Taxes imposed on the Debtors’ income and that are required to conduct business in the ordinary course.	\$0
Property Taxes	Taxes and obligations related to real and personal property holdings.	\$3,000,000
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$660,000
Government Regulatory Taxes/Licensing Fees	Taxes and obligations related to regulatory fees and the granting of licenses that are required to conduct business in the ordinary course.	\$0

2. The Debtors’ rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

3. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

4. Nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities or the other Debtors, or any claim or lien against the Debtors and all Debtors' rights with respect thereto are hereby reserved.

5. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay and, if necessary, reissue any and all checks or electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the prepetition Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the accounts to make the payments.

6. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

7. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the

Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

8. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

9. Notwithstanding anything to the contrary contained herein, (i) any payment made, or to be made, or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the “**DIP Orders**”), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Orders).

10. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

12. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the nature of the payment; (c) the amount of the payment; (d) the category or type of payment; (e) the Debtor or Debtors that made the payment; (f) the payment date; and (g) the purpose of such payment. The

Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases every 30 days beginning upon entry of this Order.

13. The Debtors are authorized to take all action necessary to effectuate the relief granted by this Order.

14. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: _____, 2020

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE