

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re:

Chapter 11

LUMASTREAM, INC.,

Case No. 8:20-bk-00999-CPM

Debtor.

**EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) APPROVING
BID PROCEDURES IN CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (II) ESTABLISHING
PROCEDURES FOR THE ASSUMPTION AND/OR ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) APPROVING
PROCEDURES FOR SELECTION OF STALKING HORSE BIDDER AND
ESTABLISHING BREAK UP FEE, (IV) APPROVING FORM AND MANNER OF
NOTICE OF BIDDING PROCEDURES, AND (V) SETTING OBJECTION DEADLINES**

LUMASTREAM, INC., as debtor and debtor in possession (the “**Debtor**”), by and through its undersigned attorneys, respectfully requests the entry of an order by this Court (i) approving bidding and auction procedures in connection with the sale of substantially all of its assets (the “**Offered Assets**”); (ii) establishing procedures including setting deadlines, related to the assumption and assignment by the Debtor of certain executory contracts and unexpired leases to which the Debtor is a party; (iii) approving the form and manner of notice of the bidding procedures; (iv) establishing procedures for the selection of a stalking horse bidder, including establishing a break-up fee; and (v) setting deadlines for filing objections to any sale (the “**Motion**”). In support of this Motion, the Debtor states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408. The statutory predicates for the relief

sought in this Motion include 11 U.S.C. §§ 105, 363, 365, 1107 and 1108 and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure.

General Background

2. On February 5, 2020 (the “**Petition Date**”), the Debtor filed its Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

3. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. LumaStream is a technology company whose core competency is built around the digital conversion of power and efficient energy distribution. LumaStream has invented technology, protected by 23 granted patents, that fundamentally changes and improves the way power is distributed in buildings.

5. While the Debtor has not currently accepted an offer for the sale of any of the Offered Assets, the Debtor has determined that it would be in the best interests of its creditors and its estate to maximize value through a sale of the Offered Assets pursuant to §363 of the Bankruptcy Code. Absent such a sale, the Debtor may be facing a liquidation under Chapter 7 of the Bankruptcy Code, which would achieve far less for creditors than a sale as a going concern.

Relief Requested

Bidding and Sale Procedures

6. The Debtor seeks approval of bidding procedures in connection with the sale of the Offered Assets, as to which a Bidder (defined below) may submit a Bid (defined below), including (a) approval of procedures for the submission of Bids (defined below); (b) approving the form and notice of Bid Procedures (as defined below); (c) approval of Auction (as defined below) procedures; (d) approval of procedures to select and approve a stalking horse bidder and approval

of any break-up fee agreed to with such stalking horse bidder; and (e) establishing procedures related to the assumption and assignment by the Debtor of certain executory contracts and unexpired leases to which the Debtor is a party.

7. The Debtor believes that the Bid Procedures set forth in this Motion will assist in determining the highest and best offer available to the Debtor for the sale of the Offered Assets. The Debtor believes that these procedures are favorable to the Debtor, the Debtor's estate and the Debtor's creditors and create a fair and level playing field for all interested Bidders. The Debtor submits that these proposed procedures will satisfy the interests of all parties in interest in assuring that the Debtor will obtain the maximum value for the Offered Assets.

9. The Debtor requests that the Court conduct a hearing (the "**Bid Procedures Hearing**") on this Motion, as soon as practicable, to consider entry of an order approving the Bid Procedures and approving the form and manner of notice with respect thereto (the "**Bid Procedures Order**").

10. At the Bid Procedures Hearing, the Debtor will request that this Court approve the following procedures (the "**Bid Procedures**") for the submission and consideration of any written competing bids (each a "**Bid**") by any competing bidder ("**Bidder**") for the Offered Assets:

(a) By no later than five (5) days after the entry of the Bid Procedures Order, the Debtor will serve on interested parties as required by the Bid Procedures Order, a motion to approve the sale of the Offered Assets (the "**Sale Motion**"), which will seek entry of an order approving the sale of the Offered Assets to the bidder(s) with the highest and best offer for the Offered Assets, or any combination of bids for certain portions of the Offered Assets, which results in the highest and best total offer for the Offered Assets consistent with the terms, conditions and dates set forth in the Bid Procedures Order.

(b) By no later than May 29, 2020, the Court will conduct a hearing (the "**Sale Hearing**") to consider approval of the Sale Motion and highest and best offer(s) submitted for the Offered Assets in accordance with the procedures set forth in the Bid Procedures Order.

(c) Any Bidder must deliver to the parties listed below a Bid for the Offered Assets by no later than 5:00 p.m. (Eastern Daylight Time) on May 22, 2020¹ (the “**Bid Deadline**”) which is five (5) business days prior to the date of the Sale Hearing or such later date agreed to by the Debtor. The parties to be served by the Bid Deadline with all Bids are: (i) counsel to the Debtor, Scott A. Stichter, Esq. and Susan Heath Sharp, Esq., Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602, Email: [sstichter@srbp.com](mailto:ssstichter@srbp.com) and [ssharp@srbp.com](mailto:sssharp@srbp.com); and (ii) the Debtor’s investment banker, James S. Cassel and Philip Cassel, Cassel Salpeter & Co., LLC, 801 Brickell Ave., Suite 1900, Miami, Florida 33131, Email: jcassel@cs-ib.com; pcassel@cs-ib.com; (the parties identified in subparagraph (i) and (ii) above being hereafter referred to as the “**Notice Parties**”).

(d) Prior to receipt by a prospective Bidder of any information (including business and financial information and access to the Debtor) from the Debtor, each such Bidder will be required to execute a confidentiality agreement in form and content acceptable to the Debtor.

(e) Each Bid shall include the following:

- i) The Bidder’s purchase agreement must be an asset purchase agreement (the “**Bidder’s APA**”) in substantially the same form as the asset purchase agreement to be filed with the Court on or before May 4, 2020 (the “**Form APA**”), accompanied by a black-line to show all changes made by such Bidder to the Form APA. The Bidder’s APA must be signed by such Bidder and be subject to acceptance by the Debtor.
- ii) The Debtor may accept modifications to a Bidder’s APA if the Debtor determines, in the exercise of its business judgment, that the proposed modifications result in a higher and better offer for the Offered Assets. A copy of the Form APA shall be furnished in Microsoft Word format to any Bidder requesting a copy.
- iii) A designation of any executory contracts or unexpired leases such Bidder desires the Debtor to assume and assign to the Bidder (the “**Designated Contracts**”).
- iv) A purchase price which is at least Five Million Dollars (\$5,000,000.00), payable in cash only, and not subject to a financing contingency (unless otherwise agreed by the Debtor).

¹The Debtor has inserted aspirational dates in the Motion and understands that the dates selected by the Court will be based on the Court’s availability.

- v) A designation of those liabilities of the Debtor that such Bidder intends to assume.
- vi) Relevant background and financial information reasonably satisfactory to the Debtor (including without limitation the latest available audited and unaudited financial statements) demonstrating the Bidder's financial ability to close and to consummate an acquisition of the Offered Assets, as set forth in the Bidder's APA, such as (1) evidence of the Bidder's ability to assume or satisfy the terms and obligations of the Bidder's APA, pay the purchase price provided for therein and provide adequate assurance of future performance as to any Designated Contracts pursuant to § 365 of the Bankruptcy Code, and (2) a lending commitment from a recognized financial institution or cash sources in the amount of the Bid subject to only those conditions that are acceptable to the Debtor.
- vii) A good faith deposit in immediately available funds in an amount equal to ten percent (10%) of the Bid (the "**Bid Deposit**"), which shall be made payable to and delivered to Stichter, Riedel, Blain & Postler, P.A. ("**Stichter Riedel**"), counsel to the Debtor, by no later than the Bid Deadline (or such later date agreed to by the Debtor). The Bid Deposit shall be deposited into a non-IOTA, non-interest-bearing trust account maintained by Stichter Riedel. Such Bid Deposit will be non-refundable to the Bidder and forfeited to the Debtor in the event such Bidder's Bid is approved by the Court at the Sale Hearing as the highest and best offer and such Bidder fails to close for any reason other than the failure of a condition to the Bidder's obligation to close provided that such failure was not caused or preceded by a default by such Bidder under any Bidder's APA. The Bid Deposit will be applied against the purchase price at the closing. Within five (5) days following the entry of the Sale Order, Stichter Riedel will return the Bid Deposit of all Bidders except the Bidder whose Bid is approved by the Sale Order (the "**Successful Bidder**") and the Backup Bidder (defined below). The Backup Bidder's Bid Deposit will be returned within five (5) days following the closing with the Successful Bidder.

(f) If the Debtor receives a qualified Bid, acceptable to the Debtor, on or before 5:00 p.m. Eastern Standard Time (including actual receipt of the Bid Deposit by Stichter Riedel) on or before May 15, 2020 (or such extended date and time as the Debtor, may establish in its sole discretion) (a "**Stalking Horse Bid**"), the Debtor may, but shall not be

obligated to, designate such bidder as a “**Stalking Horse Bidder.**” A designated Stalking Horse Bidder shall be entitled to a break-up fee (a “**Breakup Fee**”) equal to three percent (3%) of aggregate dollar amount of its Stalking Horse Bid. Any Breakup Fee shall be payable from the proceeds of any sale of the same portion of the Offered Assets to a higher bidder as approved by the Court. Aside from a designated Stalking Horse Bidder, no other Bidder submitting any Bid shall be entitled to any expense reimbursement or any break-up, termination, or similar fee or payment. The Debtor will file a notice with the Court within one (1) business day of selecting a Stalking Horse Bidder, and will serve such notice, by electronic mail transmission, on the Noticing Parties listed above, and any prospective purchasers.

(g) An auction (“**Auction**”) to consider any Bids in respect of the Offered Assets will be held at the office of Stichter Riedel on May 27, 2020 at 10:00 a.m. (Eastern Standard Time), provided that Stichter Riedel shall make arrangements to allow Bidders to participate via video conference. All potential Bidders with full authority to participate in the Auction must be present in person or by video conference at the Auction. At the Auction, the Debtor may request a Bidder to provide additional information demonstrating the Bidder’s financial ability to close and to consummate an acquisition of the Offered Assets. The Debtor shall commence the Auction with the highest Bid. Subsequent Bids shall be in the increased amount as set forth in paragraph (h) below. At the Auction, the Debtor shall consider Bids for all of the Offered Assets. At the conclusion of the Auction, the Debtor will announce the Bid or Bids it considers to be the highest and best offer(s) for the Offered Assets (the “**High Auction Bid(s)**”), after taking into account all aspects of the Bids and the Bidders’ APA (including, without limitation, the amount of the purchase price, the method and timing of the payment of the purchase price, conditions to closing, the time for closing, the likelihood of regulatory approval, the representations, warranties and covenants to be provided by the Debtor and, if applicable, the Break-up Fee). At the Sale Hearing, the Debtor will seek approval of the High Winning Bid(s). The Bidder(s) who submitted the High Auction Bid and any Backup Bids or their authorized representatives must be present at the Sale Hearing, subject to any Court order governing appearance of parties at hearings.

(h) All Bids for the purchase of substantially all of the Offered Assets above the prior high Bid must be in an amount which nets increased consideration in the amount of \$250,000.00 to the Debtor or in an amount determined by the Debtor at the Auction (the “**Overbid Amount**”). For purposes of calculating such net increased consideration, the Break-Up Fee, if applicable, shall be taken into account.

(i) The Debtor may make such modifications to the Overbid Amount and other Auction procedures as the Debtor believes are advisable, in the exercise of its discretion, to effect the Auction.

(j) No Bid shall be contingent upon receipt of financing or due diligence.

(k) Any Bidder shall provide satisfactory evidence (as determined by the Debtor) that it is (i) financially able to consummate the transaction contemplated by such

Bid and (ii) able to consummate the transaction on the date and on the terms contemplated by the Bidder's APA, including obtaining any necessary regulatory approvals.

(l) Any Bid shall not contain any conditions precedent to such Bidder's obligation to purchase the Offered Assets and assume and perform any liabilities to be assumed, other than as may be included in the Bidder's APA.

(m) Any Bid shall set forth (1) any applicable governmental, regulatory, or other approvals and any applicable consents that would be required to be obtained, (2) all actions taken to obtain such approvals or consents, (3) any approvals or consents obtained, and (4) the Bidder's best estimates as to the likelihood and timing of any such approvals or consents.

(n) If any Bid does not conform to all of the requirements set forth above, such Bid will not be considered by the Court or be admissible at the Sale Hearing, unless otherwise agreed to by the Debtor.

(o) At the Sale Hearing, the Debtor shall recommend the Bids or combination of Bids that provide the highest and best offers for the Offered Assets.

(p) At the Sale Hearing, the Debtor will request that the Court approve the second highest Bid and Bidder (the "**Backup Bidder**"), whose Bidder's APA shall be binding contracts with the Debtor and shall close in the event the Successful Bidder fails to consummate the acquisition of the Purchased Assets in accordance with the provisions described above and in the Sale Order. Any closing with the Backup Bidder shall occur within two (2) days of notification that the Successful Bidder failed to close.

(q) All objections to sale of the Offered Assets pursuant to the Bid Procedures shall be filed with the Court and served on the Notice Parties on or before the Bid Deadline.

(r) The Debtor is authorized to amend and modify the Bidding Procedures to impose additional terms and conditions on the proposed Auction and sale of the Offered Assets and assumption and assignment of the Contracts (as defined below), to account for any designation of a Stalking Horse Bidder, or to modify or eliminate any of the terms and conditions contained herein if, (i) in the Debtor's reasonable business judgment, such modifications would be in the best interest of the Debtor's estate and promote an open and fair Auction and sale process and (ii) such modifications and/or additional terms and conditions are not materially inconsistent with the provisions of the Bid Procedures Order. Notwithstanding anything herein to the contrary, the Debtor may consider and accept bids from a single qualified Bidder or from multiple qualified Bidders for less than all or substantially all of the Offered Assets.

Procedures for Assumption and/or Assignment of Contracts and Leases

11. Pursuant to 11 U.S.C. § 365, a Bidder may include Designated Contracts as part of its Bid.

12. The Debtor requests that this Court include in the Bid Procedures Order the procedures set forth below for objections to assumption and assignment of executory contracts (collectively, the “**Contracts**”).

(a) As soon as practicable, but in any event no later than five (5) business days following entry of the Bid Procedures Order, the Debtor shall serve a notice (the “**Assumption and Assignment Notice**”) by first class mail upon each counterparty to an executory contract or unexpired lease with the Debtor. The Assumption and Assignment Notice will (i) inform each recipient that the Debtor is seeking to sell substantially all of its assets, (ii) identify the executory contract between the Debtor and the recipient, (iii) advise that, in connection with the sale process, such executory contract may be assumed and assigned to a Bidder, (iv) state the amounts (the “**Cure Amounts**”) that the Debtor asserts are due to cure any non-monetary defaults in the event that the applicable executory contract is assumed and assigned, (v) advise that any objections to the Cure Amount and/or to the assumption and assignment of any executory contracts identified in an Assumption and Assignment Notice must be in writing, include the detail described below and be filed with the Court by May 26, 2020, (vi) advise that, in the event a Bidder includes Designated Contracts in its Bid, (A) the Debtor shall provide notice of such designation to the counterparty to the applicable executory contract on May 23, 2020, and (B) any objections to the ability of such Bidder to provide adequate assurance of future performance may be made in writing at any time prior to the commencement of the Sale Hearing or may be made on the record at the Sale Hearing without the need for any written objection, and (vii) advise that any timely asserted objections to the Cure Amount and/or to the assumption and assignment of any executory contracts identified in an Assumption and Assignment Notice will be decided by the Court at the Sale Hearing.

13. The Debtor requests that any counterparty to a Contract that objects to, and/or asserts any cure claims, defaults or any other claims against the Debtor in connection with, the assumption and/or assignment of their Contracts must include in its objection:

(a) the specific grounds for such objection;

(b) any and all defaults of the Debtor (whether monetary or non-monetary) that it alleges are in existence under such Contract and, (i) if such alleged defaults are monetary, the nature of such monetary defaults (including the date and

amount of any payment allegedly due under the Contract) and Cure Amounts, if any, due and owing by the Debtor pursuant to 11 U.S.C. §365(b) and, (ii) if such alleged defaults are non-monetary, the nature of such non-monetary defaults and the amount of money or the type of action required to cure such non-monetary defaults; and

(c) any and all claims of any nature whatsoever against the Debtor.

14. The Debtor requests that any counterparty to a Contract that objects to the assumption and assignment of its Contract on any grounds other than an objections to Cure Amounts must object no later than the start of the Sale Hearing.

15. The Debtor further requests that the Bid Procedures Order provide that counterparties to Contracts who fail to assert timely objections to the proposed assumption and assignment of their Contracts and/or to the Cure Amounts stated in any Assumption and Assignment Notice shall be conclusively deemed to have waived any such objections and to have consented thereto.

16. The Debtor further requests that this Court enter an order requiring that any creditor, any lessor or other party to a Contract, or any other party in interest filing an objection to assumption and/or assignment of its Contract serve the same upon the Notice Parties contemporaneously with such filing.

Notice

17. The Debtor proposes to send the Bid Procedures Order to (a) parties listed on the Local Rule 1007-2 Parties in Interest List, (b) all parties which, to the knowledge of the Debtor, have or have asserted liens on the Offered Assets; (c) all counterparties to Contracts, and (d) any party that has expressed an interest to the Debtor in acquiring any of the Offered Assets. By this Motion, the Debtor seeks this Court's approval of the form and manner of notice as being adequate

and sufficient notice of the Bid Procedures and the filing of Objections to the assumption and/or assignment of the Contracts.

WHEREFORE, the Debtor respectfully requests entry of an order granting the relief requested herein, and such other and further relief as is just and proper.

/s/ Scott A. Stichter
Scott A. Stichter (FBN 0710679)
Susan Heath Sharp (FBN 0716421)
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Attorneys for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (II) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND/OR ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) APPROVING PROCEDURES FOR SELECTION OF STALKING HORSE BIDDER AND ESTABLISHING BREAK UP FEE, (IV) APPROVING FORM AND MANNER OF NOTICE OF BIDDING PROCEDURES, AND (V) SETTING OBJECTION DEADLINES has been furnished by the

Label Matrix for local noticing
113A-8
Case 8:20-bk-00999-CPM
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Fri Apr 24 11:16:23 EDT 2020

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End of Label Matrix
Mailable recipients 23
Bypassed recipients 0
Total 23