

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

In re: WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹ <div style="text-align: center;">Debtors.</div>)))))))	Chapter 11 Case No. 18-12378 (KG) (Jointly Administered) Ref. Docket Nos. 42 & 152
--	---------------------------------	--

**CERTIFICATION OF COUNSEL
REGARDING ORDER APPROVING THE CONSUMERS
PROJECT COMPLETION AGREEMENT WITH CONSUMERS ENERGY COMPANY**

On October 22, 2018, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors Motion for Entry of an Order, Pursuant to Sections 105(A), 363(B), 503(B)(L), 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* (the “**Customer Procedures Motion**”)² [Docket No. 12].

On October 23, 2018, the Court entered an order approving the Customer Procedures Motion on a final basis (the “**Customer Procedures Order**”) [Docket No. 42]. Among other things, Customer Procedures Order authorized and approved the Debtors to enter into Customer Project Completion Agreements with some or all of their Customers without further

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 Customer Procedures Order or this Certification, as applicable.



order of the Court, but also permitted the Debtors to submit an order approving a Customer Project Completion Agreement under certification of counsel for Court approval if desired.

The Debtors have been involved in negotiations with Consumers Energy Company (“**Consumers**”) regarding arrangements for the timely completion of Phase 2 of the Saginaw Trail Pipeline Project (the “**2018 Consumers Project**”), and a conditional termination of Phases 3 and 4 of the Saginaw Trail Pipeline Project (the “**2019 Consumers Project**”). As the result of those negotiations, the Debtors reached an agreement with Consumers (the “**Consumers Project Agreement**”) that allows, *inter alia*, the Debtors to finish the 2018 Consumers Project and collect a termination fee from Consumers with respect to the 2019 Consumers Project.

Although the Customer Procedures Order permits the Debtors to enter into Customer Project Completion Agreements without further order of the Court, at the request of the Official Committee of Unsecured Creditors (the “**Committee**”) the Debtors filed and served the form of Consumers Project Agreement on November 5, 2018, under notice cover with a stated objection deadline of November 8, 2018 at 4:00 p.m. [Docket No. 152]. During this time, no party objected to approval of the Consumers Project Agreement other than that certain limited response filed by the Pipeline Industry Benefit Fund and certain local union chapters filed at Docket No. 177 for the purpose of reserving their rights as set forth therein (the “**Union Reservation of Rights**”), and counsel for the Debtors and the parties that filed the Union Reservation of Rights have resolved the Union Reservation of Rights by agreed modification to the proposed form of order previously filed with the Court. Additionally, the Debtors and Consumers have made certain minor modifications to the Consumers Project Agreement to reflect a payment made by Consumers to the Debtors after filing, and certain other minor changes requested by the surety on the 2018 Consumers Project or typographical corrections, all

of which are reflected in the final form of Consumers Project Agreement (the “**Final Consumers Project Agreement**”), as set forth in Exhibit 1 appended to the proposed form of order (the “**Proposed Order**”), attached hereto as Exhibit A. These changes have previously been shared with counsel to the Committee and the Debtors’ lenders, neither of whom have objected to the changes. Upon approval of the Proposed Order, Consumers has agreed to withdraw its *Motion for Entry of an Order Compelling Rejection of Executory Contract and Granting Related Relief* [Docket No. 163].

For the convenience of the Court, a redline showing the changes made to the Proposed Order and Consumers Project Agreement is attached hereto as Exhibit B.

Given the foregoing, and to avoid deleterious funding delays, the Debtors request that the Court enter the Proposed Order at its earliest convenience without further notice or hearing.

Dated: November 9, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Justin H. Rucki

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Justin H. Rucki (No. 5304)

Rodney Square

1000 North King Street

Wilmington, DE 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Proposed Counsel to the Debtors

EXHIBIT A

Proposed Order

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

In re: WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹ <div style="text-align: center;">Debtors.</div>)))))))	Chapter 11 Case No. 18-12378 (KG) (Jointly Administered) Ref. Docket Nos. 42 & _____
--	---------------------------------	---

**ORDER APPROVING THE CONSUMERS
PROJECT COMPLETION AGREEMENT WITH CONSUMERS ENERGY COMPANY**

Upon consideration of the *Order, Pursuant to Sections 105(A), 363(B), 503(B)(L), 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* (the “**Customer Procedures Order**”)² [Docket No. 42], pursuant to which this Court authorized and approved, among other things, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) to enter into Customer Project Completion Agreements with some or all of their Customers without further Court approval, but allowed the Debtors to seek Court approval of any such Customer Project Completion Agreements under certification of counsel; and the Court having been advised through a certification of Debtors’ counsel (the “**Certification**”) that the Debtors have negotiated and finalized the Consumers Project Agreement with Consumers, attached hereto as Exhibit 1 (the “**Consumers Project Agreement**”); and it appearing that the relief provided for herein is in the

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 Customer Procedures Order or the Certification (as defined below), as applicable.

best interest of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors are hereby authorized, but not directed, in their sole discretion, to enter into and perform under the Consumers Project Agreement attached hereto as Exhibit 1 in its entirety.

2. The Consumers Project Agreement 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.

3. Except as may be expressly set forth in a Consumers Project 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.

4. The provisions of this Order shall be binding upon and inure to the benefit of Consumers and 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.

5. 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.

6. Notwithstanding anything to the contrary contained in the Consumers Project Agreement, neither this Order nor the Consumers Project Agreement affects in any way any rights of those parties who filed the objection docketed as item 177 (the “**Objecting Parties**”) to assert, contest, reconcile or audit claims, and any and all rights, remedies and defenses with respect to the foregoing that exist by and between the Objecting Parties, the Debtors, Consumers, or any other person or entity are expressly reserved and preserved.

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

Dated: _____, 2018
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge

EXHIBIT I

Consumers Project Agreement

**CUSTOMER PROJECT COMPLETION AGREEMENT
WITH CONSUMERS ENERGY COMPANY**

This Customer Project Completion Agreement (the "Stipulation") is entered into by and between, on the one hand, Consumers Energy Company (the "Customer"), and, on the other hand, Welded Construction Michigan, LLC (the "Debtor") and Welded Construction, L.P. (collectively with the Debtor, the "Debtors" and with the Customer, the "Parties"), subject to Bankruptcy Court approval and DIP Lender consent, with respect to the following recitals:

WHEREAS, Customer has hired the Debtor for construction of a portion of the Saginaw Trail Pipeline Project, which is structured as Phase 2 (the "2018 Project") and Phases 3 and 4 (the "2019-2020 Projects") and collectively, with the 2018 Project, the "Project") under the Original Contract (as defined below);

WHEREAS, the Debtors filed voluntary petitions for chapter 11 bankruptcy relief with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on October 22, 2018 (the "Petition Date");

WHEREAS, 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. 42] (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 completion of the Project, as defined herein;

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 Debtor maintains sufficient resources to compensate unpaid sub-contractors and resolve any remaining issues among the Parties;

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 that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phase 2, 3 and 4* dated February 19, 2018 (as may have been subsequently amended or modified prior to the date hereof, the "Original Contract" and together with this Stipulation, collectively the "Contract Documents" or the "Contract"). 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. **Receivables.** The Parties agree that the Customer shall pay the Debtor \$2,829,182.22¹ for those invoices submitted to the Customer by the Debtor which have not yet been paid by the Owner on the 2018 Project (the "Receivables") in accordance with the attached Schedule A. The Receivables shall be paid to the Debtor by deposit into the Debtors' Huntington Bank Operating Account with the account number ending in 0247 (the "Operating Account") within 3 days of Customer's receipt of an order of the Bankruptcy Court approving this Stipulation. The Debtors shall hold all such funds in trust as described in ¶ 7 below.

4. **Remaining Contract Funds.** For those amounts that become due under the Contract Documents for work already completed or to be completed as of the date hereof but not yet invoiced by the Debtor, the existing terms and conditions in the parties' Contract Documents shall remain controlling with respect to the submission of invoices by the Debtor and payment thereon by the Customer. The parties acknowledge that under the Contract Documents, future invoices submitted to the Customer is \$5,256,450.83 in total (the "Remaining Contract Funds"). The Remaining Contract Funds, which Customer commits to pay in the ordinary course upon receipt of invoices by the Debtor, represents all amounts remaining due under the Contract Documents through completion of the 2018 Project including, without limitation, all incentive payments available to Debtor. To the extent that these amounts are paid to the Debtors, the Debtors shall hold all such funds in trust as described in ¶ 7 below.

5. **2019-2020 Project.** Upon Bankruptcy Court approval of this Stipulation (which date shall be the "Approval Date"), the Contract shall be terminated for convenience without further notice and without any further obligations of the Debtor or Customer, except as set forth in this Stipulation, unless otherwise mutually agreed by the Parties in writing, *provided, however*, that the Parties agree: (i) Customer shall pay a termination fee to the Debtor in the amount of \$3,000,000.00 (the "Termination Fee") within 3 days of Customer's receipt of an order of the Bankruptcy Court approving this Stipulation; and (ii) the Debtor shall have forty-five (45) days from the Approval Date to file a motion in the Bankruptcy Court to (a) assume the Contract pursuant to § 365(a) of the Bankruptcy Code, without modification of its economic terms, and assign it to a third-party contractor, subject to the consent of Customer in its sole discretion, pursuant to § 365(f) of the Bankruptcy Code (the "Assignment Option"), or (b) assume the contract without assignment pursuant to § 365(a) of the Bankruptcy Code but only if Customer gives written consent in the Customer's sole discretion (the "Going-Concern Option"). If the Debtor exercises, and Customer accepts, the Assignment Option then the Contract will spring back into existence as if it had not been terminated once the Bankruptcy Court approves the Debtor's motion. For avoidance of doubt, if the Assignment Option is exercised, the Debtors shall not be required to repay the Termination Fee or any portion thereof. If the Debtor exercises, and Customer accepts, the Going-Concern Option then the Contract will spring back into existence as if it had not been terminated once the Bankruptcy Court approves the Debtor's

¹ This amount reflects a reduction of approximately \$1.157 million from the version of this agreement filed with the Bankruptcy Court on November 5, 2018 on account of a payment made by Customer to the Debtors on November 8, 2018.

motion. If the Going-Concern Option is exercised, Customer shall be permitted to offset any amounts of the Termination Fee remaining, if any, after application pursuant to Paragraph 6 herein, against future amounts required to be paid under the Contract.

6. **Disbursement Of Receivables and Remaining Contract Funds.** The Receivables, Remaining Contract Funds and Termination Fee shall be applied as follows (the “2018 Project Obligations”): First, to pay for the go-forward costs to complete restoration, cleanup and demobilization of the 2018 Project (with the date on which such tasks are completed defined as the “Completion Date”); Second, to satisfy those subcontractors, materialmen, and other persons identified on attached Schedule B (the “Project Vendors”) that could record a construction lien against the 2018 Project; and Third, to satisfy those remaining unpaid Project Vendors identified on Schedule B, provided however, that notwithstanding the foregoing, the Parties agree that \$300,000 of the Termination Fee (the “Overhead Funds”) shall become property of the Debtors’ estate immediately upon payment of the Termination Fee, to be used for overhead of the Debtors, and not subject to the foregoing payment application waterfall. To the extent any construction liens have been recorded, each Project Vendor that has recorded such lien shall be required to execute a lien release prior to or upon the delivery of the payment amount as a condition of receiving payment.

7. **Ownership of Funds Pending Payment to Project Vendors.** Regardless of what bank account(s) the Receivables, Remaining Contract Funds and Termination Fee are placed in by the Debtors, all funds disbursed by Customer to the Debtors other than the Overhead Funds shall be utilized to satisfy the 2018 Project Obligations, at all times shall remain held in trust for that purpose until disbursed to the parties entitled to receive the funds, shall not become or be treated as cash collateral as defined by § 363(a) of the Bankruptcy Code (except to the extent that such funds are held in trust for the Debtors’ own benefit), and shall not become the property of the Debtors or become subject to the liens of any creditors of the Debtors, including but not limited to North American Pipeline Equipment Company, LLC (the “DIP Lender”), until such 2018 Project Obligations are resolved. If any funds from the Receivables, Remaining Contract Funds and Termination Fee remain after the 2018 Project Obligations are resolved, such funds shall be available to the Debtors for general use and subject to any liens of the DIP Lender. For the avoidance of doubt, the Overhead Funds shall become and remain property of the Debtors’ estate immediately upon payment of the Termination Fee regardless of whether such funds are held in the Operating Account or any other bank account(s).

8. **Payment of Project Obligations.** Notwithstanding anything to the contrary herein, the Debtor reserves its rights to pay any obligations concerning the Project in advance or to modify trade terms with such subcontractors, suppliers or materialmen as necessary in the Debtors’ discretion so long as any resulting payment to a Project Vendor results in the Project Vendor unconditionally waiving any existing lien rights on the Project at the time of payment.

9. **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 until the Completion Date, or such later dates as may be mutually agreed by the Parties. Upon the Completion Date, Debtor shall have no further obligations to Customer under the Contract Documents or otherwise with respect to the Project, subject only to the Going-Concern Option.

10. **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 2018 Project, until the Completion Date, at which time the Customer and the Debtors mutually waive and release any and all claims and causes of action under the Contract and with respect to the Project, except as set forth herein. Furthermore, in the event that the Going-Concern Option is exercised, the Debtors, Customer and the surety reserve their rights with respect to the application of the surety bond to the 2019-2020 Projects.

11. **Application of Stipulation to Certain Specified Non-Parties.** Welded Construction, L.P. and North American Pipeline Equipment Company, LLC's execution of this Stipulation is solely for consent purposes. Welded Construction, L.P. and North American Pipeline Equipment Company, LLC, which are not parties to the Contract, obtain no rights against Customer or rights in the Contract by virtue of its execution of this Stipulation.

12. **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.

13. **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.

14. **Governing Law.** This Stipulation and all questions relating to its, interpretation, or 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 Stipulation during the pendency of the Debtors' bankruptcy cases. All other disputes arising under the Contract Documents that relate to the work and/or services on the Project shall be subject to any choice of law or forum selection clauses present in the parties' Original Contract.

15. **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.

16. **Effective Date.** This Stipulation shall become effective upon (i) its last execution by the authorized representatives of all of the Parties, and (ii) entry of an order of the Bankruptcy Court approving this Stipulation. If the Bankruptcy Court does not enter an order approving this Stipulation by 12:01 a.m. (ET) on November 20, 2018, this Stipulation shall become immediately null and void absent a written agreement of the Parties to extend such expiration deadline.

17. **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.

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

19. **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.

20. **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.

21. **Amendment.** No modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Parties.

22. **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 duly authorized representatives as of the date in the heading of this Stipulation.

STIPULATED and AGREED to this 5th day of November, 2018.

Welded Construction Michigan, LLC

By: /s/ Stephen D. Hawkins

Print: Stephen D. Hawkins

Date: 11/8/2018

Welded Construction, L.P.

By: Stephen D. Hawkins

Print: Stephen D. Hawkins

Date: 11/8/2018

Consumers Energy Company

By: PATRICIA K POPPE

Print: Patricia K. Poppe

Date: 11/8/2018

Acknowledged by:
**North American Pipeline Equipment Company,
LLC**

By: _____

Print: _____

Date: _____

Consumers Energy Company

By: _____

Print: _____

Date: _____

Acknowledged by:
**North American Pipeline Equipment Company,
LLC**

By: Rich Wall w/powers *Matthew*

Print: Rich Wall *Culsey*

Date: 11/8/18

SCHEDULE A TO STIPULATION

SCHEDULE OF PAYMENT OF RECEIVABLES

Schedule A: Schedule of Payment of Prepetition Receivables

<i>Invoice #</i>	<i>Amount</i>	<i>Date Submitted</i>	<i>Period Begin</i>	<i>Period End</i>
2018-09M-030	\$ 997,828.56	11-Oct	1-Oct	7-Oct
2018-09M-031	\$ 898,245.75	16-Oct	8-Oct	14-Oct
2018-09M-032	\$ 933,107.91	16-Oct	8-Oct	14-Oct
Open A/R	\$ 2,829,182.22			

SCHEDULE B TO STIPULATION

PROJECT VENDORS

INTENTIONALLY OMITTED

EXHIBIT B

Redline of Proposed Order and Agreement

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

In re:Chapter 11In re:Chapter 11WELDED CONSTRUCTION, L.P., *et al.*,¹

Case No. 18-12378 (KG)

Debtors.

(Jointly Administered)

Ref. Docket Nos. ~~42~~42, 177 & _____

**ORDER APPROVING THE CONSUMERS
PROJECT COMPLETION AGREEMENT WITH CONSUMERS ENERGY COMPANY**

Upon consideration of the *Order, Pursuant to Sections 105(A), 363(B), 503(B)(L), 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* (the “**Customer Procedures Order**”)² [Docket No. 42], pursuant to which this Court authorized and approved, among other things, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) to enter into Customer Project Completion Agreements with some or all of their Customers without further Court approval, but allowed the Debtors to seek Court approval of any such Customer Project Completion Agreements under certification of counsel; and the Court having been advised through a certification of Debtors’ counsel (the “**Certification**”) that the Debtors have negotiated and finalized the Consumers Project Agreement with Consumers, attached hereto as Exhibit 1 (the “**Consumers Project Agreement**”); and it appearing that the relief provided for herein is in the

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 Customer Procedures Order or the Certification (as defined below), as applicable.

best interest of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors are hereby authorized, but not directed, in their sole discretion, to enter into and perform under the Consumers Project Agreement attached hereto as Exhibit 1 in its entirety.

2. The Consumers Project Agreement 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.

3. Except as may be expressly set forth in a Consumers Project 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.

4. The provisions of this Order shall be binding upon and inure to the benefit of Consumers and 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.

5. 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.

6. Notwithstanding anything to the contrary contained in the Consumers Project Agreement, neither this Order nor the Consumers Project Agreement affects in any way any rights of those parties who filed the objection docketed as item 177 (the “Objecting Parties”) to assert, contest, reconcile or audit claims, and any and all rights, remedies and defenses with respect to the foregoing that exist by and between the Objecting Parties, the Debtors, Consumers, or any other person or entity are expressly reserved and preserved.

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

Dated: _____, 2018
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge

EXHIBIT I

Consumers Project Agreement

Document comparison by Workshare Compare on Friday, November 09, 2018
9:50:29 AM

Input:	
Document 1 ID	interwovenSite://WORKSITE02/YCST01/23787182/2
Description	#23787182v2<YCST01> - Welded - Consumers Energy Company Order for Customer Program Motion
Document 2 ID	interwovenSite://WORKSITE02/YCST01/23787182/3
Description	#23787182v3<YCST01> - Welded - Consumers Energy Company Order for Customer Program Motion
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	7
Deletions	6
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	21

**CUSTOMER PROJECT COMPLETION AGREEMENT
WITH CONSUMERS ENERGY COMPANY**

This Customer Project Completion Agreement (the “Stipulation”) is entered into by and between, on the one hand, Consumers Energy Company (the “Customer”), and, on the other hand, Welded Construction Michigan, LLC (the “Debtor”) and Welded Construction, L.P. (collectively with the Debtor, the “Debtors” and with the Customer, the “Parties”), subject to Bankruptcy Court approval and DIP Lender consent, with respect to the following recitals:

WHEREAS, Customer has hired the Debtor for construction of a portion of the Saginaw Trail Pipeline Project, which is structured as Phase 2 (the “2018 Project”) and Phases 3 and 4 (the “2019-2020 Projects” and collectively, with the 2018 Project, the “Project”) under the Original Contract (as defined below);

WHEREAS, the Debtors filed voluntary petitions for chapter 11 bankruptcy relief with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on October 22, 2018 (the “Petition Date”);

WHEREAS, 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. 42] (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 completion of the Project, as defined herein;

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 Debtor maintains sufficient resources to compensate unpaid sub-contractors and resolve any remaining issues among the Parties;

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 that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phase 2, 3 and 4* dated February 19, 2018 (as may have been subsequently amended or modified prior to the date hereof, the “Original Contract” and together with this Stipulation, collectively the “Contract Documents” or the “Contract”). 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. **Receivables.** The Parties agree that the Customer shall pay the Debtor ~~\$5,629,367.27~~2,829,182.22¹ for those invoices submitted to the Customer by the Debtor which have not yet been paid by the Owner on the 2018 Project (the “Receivables”) in accordance with the attached Schedule A. The Receivables shall be paid to the Debtor by deposit into the Debtors’ Huntington Bank Operating Account with the account number ending in 0247 (the “Operating Account”) within 3 days of Customer’s receipt of an order of the Bankruptcy Court approving this Stipulation. The Debtors shall hold all such funds in trust as described in ¶ 7 below.

4. **Remaining Contract Funds.** For those amounts that become due under the Contract Documents for work already completed or to be completed as of the date hereof but not yet invoiced by the Debtor, the existing terms and conditions in the parties’ Contract Documents shall remain controlling with respect to the submission of invoices by the Debtor and payment thereon by the Customer. The parties acknowledge that under the Contract Documents, future invoices submitted to the Customer is ~~\$3,554,792.23~~5,256,450.83 in total (the “Remaining Contract Funds”). The Remaining Contract Funds, which Customer commits to pay in the ordinary course upon receipt of invoices by the Debtor, represents all amounts remaining due under the Contract Documents through completion of the 2018 Project including, without limitation, all incentive payments available to Debtor. To the extent that these amounts are paid to the Debtors, the Debtors shall hold all such funds in trust as described in ¶ 7 below.

5. **2019-2020 Project.** Upon Bankruptcy Court approval of this Stipulation (which date shall be the “Approval Date”), the Contract shall be terminated for convenience without further notice and without any further obligations of the Debtor or Customer, except as set forth in this Stipulation, unless otherwise mutually agreed by the Parties in writing, *provided, however*, that the Parties agree: (i) Customer shall pay a termination fee to the Debtor in the amount of \$3,000,000.00 (the “Termination Fee”) within 3 days of Customer’s receipt of an order of the Bankruptcy Court approving this Stipulation; and (ii) the Debtor shall have forty-five (45) days from the Approval Date to file a motion in the Bankruptcy Court to (a) assume the Contract pursuant to § 365(a) of the Bankruptcy Code, without modification of its economic terms, and assign it to a third-party contractor, subject to the consent of Customer in its sole discretion, pursuant to § 365(f) of the Bankruptcy Code (the “Assignment Option”), or (b) assume the contract without assignment pursuant to § 365(a) of the Bankruptcy Code but only if Customer gives written consent in the Customer’s sole discretion (the “Going-Concern Option”). If the Debtor exercises, and Customer accepts, the Assignment Option then the Contract will spring back into existence as if it had not been terminated once the Bankruptcy Court approves the Debtor’s motion. For avoidance of doubt, if the Assignment Option is exercised, the Debtors shall not be required to repay the Termination Fee or any portion thereof. If the Debtor exercises, and Customer accepts, the Going-Concern Option then the Contract will spring back into

¹ This amount reflects a reduction of approximately \$1.157 million from the version of this agreement filed with the Bankruptcy Court on November 5, 2018 on account of a payment made by Customer to the Debtors on November 8, 2018.

existence as if it had not been terminated once the Bankruptcy Court approves the Debtor's motion. If the Going-Concern Option is exercised, Customer shall be permitted to offset any amounts of the Termination Fee remaining, if any, after application pursuant to Paragraph 6 herein, against future amounts required to be paid under the Contract.

6. **Disbursement Of Receivables and Remaining Contract Funds.** The Receivables, Remaining Contract Funds and Termination Fee shall be applied as follows (the "2018 Project Obligations"): First, to pay for the go-forward costs to complete restoration, cleanup and demobilization of the 2018 Project (with the date on which such tasks are completed defined as the "Completion Date"); Second, to satisfy those subcontractors, materialmen, and other persons identified on attached Schedule B (the "Project Vendors") that could record a construction lien against the 2018 Project; and Third, to satisfy those remaining unpaid Project Vendors identified on Schedule B, provided however, that notwithstanding the foregoing, the Parties agree that \$300,000 of the Termination Fee (the "Overhead Funds") shall become property of the Debtors' estate immediately upon payment of the Termination Fee, to be used for overhead of the Debtors, and not subject to the foregoing payment application waterfall. To the extent any construction liens have been recorded, each Project Vendor that has recorded such lien shall be required to execute a lien release prior to or upon the delivery of the payment amount as a condition of receiving payment.

7. **Ownership of Funds Pending Payment to Project Vendors.** Regardless of what bank account(s) the Receivables, Remaining Contract Funds and Termination Fee are placed in by the Debtors, all funds disbursed by Customer to the Debtors other than the Overhead Funds shall be utilized to satisfy the 2018 Project Obligations, at all times shall remain held in trust for that purpose until disbursed to the parties entitled to receive the funds, shall not become or be treated as cash collateral as defined by § 363(a) of the Bankruptcy Code (except to the extent that such funds are held in trust for the Debtors' own benefit), and shall not become the property of the Debtors or become subject to the liens of any creditors of the Debtors, including but not limited to North American Pipeline Equipment Company, LLC (the "DIP Lender"), until such 2018 ~~Customer~~Project Obligations are resolved. If any funds from the Receivables, Remaining Contract Funds and Termination Fee remain after the 2018 Project Obligations are resolved, such funds shall be available to the Debtors for general use and subject to any liens of the DIP Lender. For the avoidance of doubt, the Overhead Funds shall become and remain property of the Debtors' estate immediately upon payment of the Termination Fee regardless of whether such funds are held in the Operating Account or any other bank account(s).

8. **Payment of Project-~~Customer~~ Obligations.** Notwithstanding anything to the contrary herein, the Debtor reserves its rights to pay any obligations concerning the Project in advance or to modify trade terms with such subcontractors, suppliers or materialmen as necessary in the Debtors' discretion so long as any resulting payment to a Project Vendor results in the Project Vendor unconditionally waiving any existing lien rights on the Project at the time of payment.

9. **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 until the Completion Date, or such later dates as may be mutually agreed by the Parties. Upon the Completion Date,

Debtor shall have no further obligations to Customer under the Contract Documents or otherwise with respect to the Project, subject only to the Going-Concern Option.

10. **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 2018 Project, until the Completion Date, at which time the Customer and the Debtors mutually waive and release any and all claims and causes of action under the Contract and with respect to the Project, except as set forth herein. Furthermore, in the event that the Going-Concern Option is exercised, the Debtors, Customer and the surety reserve their rights with respect to the application of the surety bond to the 2019-2020 Projects.

11. **Application of Stipulation to Certain Specified Non-Parties.** Welded Construction, L.P. and North American Pipeline Equipment Company, LLC's execution of this Stipulation is solely for consent purposes. Welded Construction, L.P. and North American Pipeline Equipment Company, LLC, which are not parties to the Contract, obtain no rights against Customer or rights in the Contract by virtue of its execution of this Stipulation.

12. **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.

13. **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.

14. **Governing Law.** This Stipulation and all questions relating to its, interpretation, or 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 Stipulation during the pendency of the Debtors' bankruptcy cases. All other disputes arising under the Contract Documents that relate to the work and/or services on the Project shall be subject to any choice of law or forum selection clauses present in the parties' Original Contract.

15. **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.

16. **Effective Date.** This Stipulation shall become effective upon (i) its last execution by the authorized representatives of all of the Parties, and (ii) entry of an order of the Bankruptcy Court approving this Stipulation. If the Bankruptcy Court does not enter an order approving this Stipulation by 12:01 a.m. (ET) on November 20, 2018, this Stipulation shall become

immediately null and void absent a written agreement of the Parties to extend such expiration deadline.

17. **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.

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

19. **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.

20. **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.

21. **Amendment.** No modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Parties.

22. **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 duly authorized representatives as of the date in the heading of this Stipulation.

STIPULATED and AGREED to this 5th day of November, 2018.

Welded Construction Michigan, LLC

By: _____

Print: _____

Date: _____

Welded Construction, L.P.

By: _____

Print: _____

Date: _____

Consumers Energy Company

By: _____

Print: _____

Date: _____

Acknowledged by:
**North American Pipeline Equipment Company,
LLC**

By: _____

Print: _____

Date: _____

SCHEDULE A TO STIPULATION

SCHEDULE OF PAYMENT OF RECEIVABLES

SCHEDULE B TO STIPULATION

PROJECT VENDORS

-

Document comparison by Workshare Compare on Friday, November 09, 2018
9:38:56 AM

Input:	
Document 1 ID	interwovenSite://WORKSITE02/YCST01/23780019/9
Description	#23780019v9<YCST01> - Welded - Consumers Customer Agreement
Document 2 ID	interwovenSite://WORKSITE02/YCST01/23780019/11
Description	#23780019v11<YCST01> - Welded - Consumers Customer Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	14
Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	24