

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	
	)	Chapter 11
	)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-12378 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Ref. Docket No. 392, 462 & 463
	)	

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**CONSENT ORDER CLARIFYING THE BANKRUPTCY COURT’S JURISDICTION  
AND RELATED RELIEF UNDER ORDER GRANTING MOTION OF THE DEBTORS  
FOR APPROVAL OF COMPROMISE AND SETTLEMENT RESOLVING CERTAIN  
DISPUTES WITH SUNOCO PARTNERS MARKETING & TERMINALS L.P. AND  
SUNOCO PIPELINE, L.P. PURSUANT TO RULE 9019 OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE AND 11 U.S.C. § 105 [D.I. 392]**

Upon consideration of the emergency motion (the “**Emergency Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), pursuant to section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and sections 157 and 1334 of title 28 of the United States Code, 28 U.S.C. §§ 1–5001 (the “**Judicial Code**”), clarifying that certain terms of the *Order Granting Motion of the Debtors for Approval of Compromise and Settlement Resolving Certain Disputes with Sunoco Partners Marketing & Terminals L.P. and Sunoco Pipeline L.P. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 105 [D.I. 392]*, dated January 3, 2019 (the “**Settlement Order**”) approving *Stipulation and Settlement Agreement* between the Debtors on the one hand, and Sunoco Partners Marketing & Terminals L.P. and Sunoco Pipeline, L.P. (together “**Sunoco**,” and with the Debtors, the “**Parties**”) on the other,

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Emergency Motion.



including with respect to the agreements contemplated to be entered into thereunder with the Subcontractors (as defined below) (the “**Settlement Agreement**”); and it appearing that the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) has jurisdiction to consider the Emergency Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that the Emergency Motion is a core matter pursuant to section 157(b)(2) of the Judicial Code and that this Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these chapter 11 cases and of the Emergency Motion is proper pursuant to sections 1408 and 1409 of the Judicial Code; and it appearing that due and adequate notice of the Emergency Motion has been given under the circumstances and that no other or further notice need be given; and it appearing that the relief requested in the Emergency Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest and an appropriate exercise of the Debtors’ business judgment; and after due deliberation, and good and sufficient cause appearing therefor; and the Parties having conferred and agreed on the resolution set forth in this consent Order, it is hereby **ORDERED, ADJUDGED and DECREED THAT:**

1. The Emergency Motion is RESOLVED to the extent set forth herein.
2. The DPAs shall be governed by and be construed in accordance with the laws of the State of Texas with venue being proper in Harris County, Texas. Any and all claims by or against Sunoco under the DPAs shall be brought in Harris County, Texas. Any dispute by and between Contractor and Subcontractor (and not against Sunoco) shall be adjudicated by the United States Bankruptcy Court for the District of Delaware. The Bankruptcy Court shall retain jurisdiction of, among other things, disputes arising from the implementation or interpretation of this Order, the Settlement Order and the Settlement Agreement.

3. All DPA's submitted to Sunoco after the date of this Order shall include the following "Applicable Law" provision: *This DPA shall be governed by and be construed in accordance with the laws of the State of Texas with venue being proper in Harris County. Any and all claims by or against Sunoco under this DPA shall be brought in Harris County. Any dispute by and between Contractor and Subcontractor (and not against Sunoco) shall be adjudicated by the United States Bankruptcy Court for the District of Delaware.*

4. All Releases submitted to Sunoco after the date of this Order shall include Owner in the language in Section 1, such that it shall read as follows: *"...For the avoidance of doubt, upon payment of the Claim Amount, [SUBCONTRACTOR] acknowledges that (i) it has forever waived and released any and all rights, claims, interests, defenses or causes of action, whether known or unknown and of any nature whatsoever, against Contractor and Owner related to the Project, the Property or in connection with the actual services, work, or supplies on the Project that have been or were obligated to be performed in any time period regardless of the Applicable Release Date pursuant to, whether written or oral, contracts, purchase orders, work orders or other agreements with Contractor (the "Services"), and (ii) will withdraw any such claim previously filed within seven (7) business days, against Contractor and Owner in any case, including in Contractor's pending chapter 11 bankruptcy case, case no 18-12378 (KG) currently pending in the United States Bankruptcy Court for the District of Delaware."*

5. For DPAs submitted to Sunoco prior to the execution of this Order, Sunoco shall use best efforts to make payment within seven (7) days from the entry of this order, but in no event later than fourteen (14) days following entry of this order. Notwithstanding the foregoing, to the extent that the Debtors have previously submitted a DPA for a Critical Subcontractor, Sunoco agrees to use its best efforts to make payment within three (3) days of receipt by Sunoco

of the executed modification required by Paragraph 6 but in no event later than fourteen (14) days after receipt of such modification.

6. An amendment shall be obtained by Debtor for all DPAs for Critical Subcontractors submitted to Sunoco prior to the date of this Order, which amendment shall include the following “Applicable Law” provision: *This DPA shall be governed by and be construed in accordance with the laws of the State of Texas with venue being proper in Harris County, Texas. Any and all claims by or against Sunoco under this DPA shall be brought in Harris County. Any dispute by and between Contractor and Subcontractor (and not against Sunoco) shall be adjudicated by the United States Bankruptcy Court for the District of Delaware.*

7. For all Subcontractor settlements entered into after the date of this Order, the Debtor shall use the forms included as part of the Direct Pay Packet attached to the Motion as Exhibits B and C (and attached hereto as Exhibit A) and as modified by this Order. The Parties agree to work in good faith to resolve any issues related to the DPA’s and other ancillary Settlement Documents going forward.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

9. This Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.



4 KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

## EXHIBIT A

## SUBCONTRACTOR DIRECT PAY AGREEMENT AND AUTHORIZATION

This Direct Pay Agreement (“DPA”) is entered into this      day of                     , 2019 by and among **Sunoco Pipeline, L.P.** and **Sunoco Partners Marketing & Terminals, L.P.** (collectively, “Company”), **Welded Construction, L.P. and its affiliates** (“Contractor”), and                      (“Subcontractor”). Company, Contractor, and Subcontractor may be referenced herein separately as a “Party” or collectively as the “Parties.”

**WHEREAS**, Company and Contractor entered into: (i) Master Construction Services Agreement No. 4600000999 effective September 8, 2015 (together, with all amendments thereto, the “Master Construction Services Agreement”); and (ii) a Completion Agreement, dated May 23, 2018 (together with the Master Construction Services Agreement, the “Agreement”) for the provision of certain construction services on the Mariner East 2 Pipeline Project (the “Project”);

**WHEREAS**, Contractor subcontracted certain                                      work to Subcontractor on the Project pursuant to a Subcontract dated                                      (the “Subcontract”);

**WHEREAS**, the Agreement was terminated effective as of October 19, 2018;

**WHEREAS**, following termination of the Agreement, Subcontractor has claims for certain work or services previously provided to Contractor on the Project;

**WHEREAS**, on October 22, 2018, Contractor filed a voluntary petition under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Case”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

**WHEREAS**, on December 20, 2018, Company and Contractor entered into that certain Stipulation and Settlement Agreement (the “Settlement Agreement”) in the Bankruptcy Case;

**WHEREAS**, on January 3, 2019, the Bankruptcy Court approved the Settlement Agreement by entering the *Order Granting Motion of the Debtors for Approval of Compromise and Settlement Resolving Certain Disputes with Sunoco Partners Marketing & Terminals L.P. and Sunoco Pipeline, L.P. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 105* [D.I. 392].

**WHEREAS**, pursuant to the terms of the Settlement Agreement, the Parties desire to enter into this DPA for Company to directly pay amounts Subcontractor is owed by Contractor for work or services previously provided to Contractor prior to the termination;

**WHEREAS**, Company retained a supplemental general contractor, Precision Pipeline, LLC (“Precision”), to take over Contractor’s work on the Project; and

**WHEREAS**, amounts payable for work performed by Subcontractor after Contractor’s termination shall be included in the amount payable to Subcontractor under the Precision

Subcontract and shall be paid by Precision to Subcontractor in accordance with the terms of the Precision Subcontract.

**NOW, THEREFORE,** for and in consideration of the promises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties agree as follows:

The recitals set forth in the “Whereas” clauses above are incorporated herein by reference.

**Direct Pay.** Within fourteen (14) days of Subcontractor’s submission to Company of a lien and claim release in the form attached hereto as Exhibit A, Company agrees to directly pay to Subcontractor \$ [REDACTED] (“Direct Pay Sum”) as full and final payment for all amounts owed by Contractor under the Subcontract, including but not limited to: (a) any and all outstanding change order requests arising out of or relating to work performed prior to October 19, 2018; and (b) any other events and occurrences, whether known or unknown, that may be the basis of a demand for additional compensation for work performed through October 19, 2018. Subcontractor agrees that this Direct Pay Sum is the total outstanding balance owed on the Subcontract and includes any and all invoices previously unpaid on the Subcontract through October 19, 2018. Subcontractor expressly waives and releases any claim for additional payment against Contractor or Company under the Subcontract or the Project and acknowledges that this Direct Pay Sum constitutes compensation in full for all work or services performed on the Project or under the Subcontract through October 19, 2018. For the avoidance of doubt, Subcontractor waives and releases any and all rights to assert any claims of any nature whatsoever against Contractor in the Bankruptcy Case.

**Contractor Consent.** Contractor consents to Company’s direct pay of the Direct Pay Sum. Contractor waives and releases Company from any and all claims related to breach or non-compliance of the payment terms and conditions of the Agreement as a result of Company’s direct pay under this DPA.

**Limited Scope of DPA.** The payment to be made by Company under this Agreement is a one-time-only payment to Subcontractor for all work performed under the Subcontract through October 19, 2018, and constitutes payment in full for Subcontractor’s work on the Project through October 19, 2018. This DPA shall not be construed to nor shall it create any Company obligation to assume any other obligations of Contractor to Subcontractor. Subcontractor waives any rights or claims against Company and Contractor for Company’s direct payment to Subcontractor or any of Contractor’s other subcontractors providing materials or services to the Project not explicitly set forth in this DPA and/or the Settlement Agreement. Company shall have no obligation to direct pay any of Contractor’s subcontractors other than as set forth in this DPA and the Settlement Agreement.

**Conditions Precedent.** Company’s receipt of a properly completed and submitted: (i) invoice; (ii) executed lien release in the form attached hereto as Exhibit A; (iii) executed lien releases by any of Subcontractor’s contractors, subcontractors, and suppliers in the form attached hereto as Exhibit A (if applicable); and (iv) Company’s standard “Vendor Set Up Packet” are conditions precedent to Company’s obligation to pay the Direct Pay Sum under this DPA.

**Warranty; Indemnification.** Subcontractor warrants and represents that Subcontractor is the owner of and is entitled to receive the Direct Pay Sum and has not sold or assigned the amount to a third party, and that Subcontractor is entitled to accept payment for the Direct Pay Sum. Subcontractor warrants and represents that no liens have been filed or will be filed against the Project by either Subcontractor or any of Subcontractor's contractors, subcontractors or suppliers, and that all such contractors, subcontractors and suppliers have been paid in full for their work or material supplied on the Project. **SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD COMPANY HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CLAIMS AND DEMANDS ARISING OUT OF OR RELATED TO COMPANY'S PAYMENT OF THE DIRECT PAY SUM OR THE FILING OF ANY LIENS AGAINST THE PROJECT BY SUBCONTRACTOR OR SUBCONTRACTOR'S CONTRACTORS, SUBCONTRACTORS OR SUPPLIERS. IF A LIEN IS FILED BY ANY SUCH PARTY IN CONNECTION WITH THIS PROJECT, SUBCONTRACTOR SHALL SECURE A RELEASE OF THE LIEN CLAIM WITHIN THIRTY (30) DAYS OF ITS FILING.**

**Severability.** The Parties desire and intend that the terms, provisions and covenants contained herein shall be enforceable to the fullest extent permitted by law. If any such term, provision or covenant, or portion thereof, or the application thereof to any person or circumstances shall to any extent be construed to be invalid or unenforceable, in whole or in part, then such term, provision or covenant, or portion thereof, shall be construed so as to permit its enforceability under the applicable law to the fullest extent permitted by law. In any case, the remaining provisions of this DPA or the application thereof to any person or circumstances, other than those that have been held invalid or unenforceable, shall remain in full force and effect.

**Applicable Law.** This DPA shall be governed by and be construed in accordance with the laws of the State of Texas with venue being proper in Harris County. ~~Notwithstanding the foregoing, to the extent of any dispute that includes Contractor under this DPA,~~ Any and all claims by or against Sunoco under this DPA shall be brought in Harris County. Any dispute by and between Contractor and Subcontractor (and not against Sunoco) shall be adjudicated by the United States Bankruptcy Court for the District of Delaware ~~shall retain jurisdiction and proper venue over any and all matters arising from or related to the DPA.~~

[Signatures on following page]



**COMPANY**

**Sunoco Pipeline, L.P. and Sunoco Partners Marketing & Terminals, L.P.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR**

**Welded Construction, L.P.**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBCONTRACTOR**

**[Insert Subcontractor Name]**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

## SUBCONTRACTOR'S RELEASE OF LIENS AND CLAIMS

**Project Description:** Each “spread” identified below of the Mariner East 2 Pipeline Project (the “Project”):

- 54 miles of 20” NGL pipeline beginning at the Scio Fractionator in Harrison County, Ohio and ending at the Houston Station site in Washington County, Pennsylvania,
- 50.9 miles of 20” NGL pipeline beginning at the Houston Station site in Washington County, Pennsylvania and Westmoreland County, Pennsylvania, and
- 47.7 miles of 120” NGL pipeline and 47.7 miles of 16” NGL pipeline beginning at mile post 276.8 at the county line on Dauphin/Lebanon counties, Pennsylvania and ending at mile post 324.5 at the county line in Berks/Chester counties, Pennsylvania;

**Property Description:** Sites and rights-of-way as defined in Master Construction Agreement No. 4600000999 and associated documents (the “Property”);

**Owner:** Sunoco Pipeline L.P., Sunoco Partners Marketing & Terminals, or their affiliates (the “Owner”);

**Contractor:** Welded Construction, L.P. and its affiliates (the “Contractor”);

**Subcontractor:** [REDACTED] (the “Subcontractor”).

1. The undersigned represents that, as of the Applicable Release Date (as defined below), the undersigned has been paid the sum of \$ [REDACTED] (the “Claim Amount”) in connection with its work on the Project, and the undersigned waives and releases all rights he/she/it has to assert claims of any kind, including, without limitation, those arising from mechanic’s lien, materialman’s lien, construction lien, or other lien rights, against Contractor, Owner or any interest of Owner or others in the Property with respect to work performed or labor, materials, or equipment supplied through the 19th day of October, 2018 (“Applicable Release Date”). For the avoidance of doubt, upon payment of the Claim Amount, [REDACTED] acknowledges that (i) it has forever waived and released any and all rights, claims, interests, defenses or causes of action, whether known or unknown and of any nature whatsoever, against Contractor and Owner related to the Project, the Property or in connection with the actual services, work, or supplies on the Project that have been or were obligated to be performed in any time period regardless of the Applicable Release Date pursuant to, whether written or oral, contracts, purchase orders, work orders or other agreements with Contractor (the “Services”), and (ii) ~~will assert no claim related to the Project, the Property or the Services, or~~ will withdraw any such claim previously filed within seven (7) business days, against Contractor and Owner in any case, including in Contractor’s pending chapter 11 bankruptcy case, case no 18-12378 (KG) currently pending in the United States Bankruptcy Court for the District of Delaware.

2. The undersigned further represents and warrants the following:

- a. the undersigned has received full and final payment for all work performed and labor, materials, and equipment supplied in connection with the Project through the Applicable Release Date; and

- b. there are no outstanding claims with respect to work performed on the Project, or labor, materials, or equipment supplied for the Project through the Applicable Release Date; and
- c. the undersigned has not assigned any claim or lien right against the Owner, the Property, or the Project to any other person or entity; and
- d. all persons or entities from whom the undersigned obtained labor, materials, equipment, or services for the Project have been paid in full and no such person or entity has any claim or lien against the Project for work performed on the Project, or labor, materials, equipment, or services supplied for the Project, through the Applicable Release Date; and
- e. no security interest has been given or executed by the undersigned in connection with any materials or equipment placed upon or installed in the Project.

3. The undersigned certifies that it completed the work in accordance with the plans and specifications of the agreement.

Name of Subcontractor: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name and Title: \_\_\_\_\_