Docket #0485 Date Filed: 02/06/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
Debtors.	)	(Jointly Administered)
	)	**Ref. Docket Nos. 349 & 368**

CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACT PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

On December 20, 2018, the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") filed the *Debtors' Motion for Entry of an Order Authorizing Assumption and Assignment of Certain Executory Contract Pursuant to Section 365 of the Bankruptcy Code* [Docket No. 349] (the "**Motion**"). Attached as Exhibit A to the Motion was a proposed form of order (the "**Proposed Order**").

Pursuant to the Motion, any objections or responses to the Motion were to be filed by December 31, 2018, at 4:00 p.m. (ET) (the "**Objection Deadline**"). Prior to the Objection Deadline, Consumers Energy Company ("**Consumers**") filed a response to the Motion [Docket No. 368] (the "**Response**"). In addition, the Debtors received several informal comments (the "**Informal Comments**") from various interested parties (the "**Interested Parties**") with respect to the Proposed Order. No other responses or objections to the Motion were filed prior to the Objection Deadline.

[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.

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On January 3, 2019, the Debtors presented the Motion to the Court and outlined the relief sought therein. The Court conditionally approved the Motion subject to a consensual resolution of the Response and the Informal Comments.

The Debtors have worked with Consumers and the Interested Parties to address their concerns, and have resolved the Response and the Informal Comments through certain revisions to the Proposed Order. Attached hereto as **Exhibit A** is a revised Proposed Order (the "**Revised Proposed Order**").[2] The Debtors submit that entry of the Revised Proposed Order is appropriate and consistent with the Debtors' discussions with Consumers and the Interested Parties and the relief requested in the Motion, and that entry of the Revised Proposed Order is in the best interests of the Debtors and their estates. Counsel for Consumers and the Interested Parties do not object to the entry of the Revised Proposed Order.

Accordingly, the Debtors respectfully request that the Court enter the Revised Proposed Order at its earliest convenience without further notice or a hearing.

Dated: February 6, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke

M. Blake Cleary (No. 3614)
Sean M. Beach (No. 4070)
Allison S. Mielke (No. 5934)
Betsy L. Feldman (No. 6410)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel to the Debtors

[2] For ease of reference, attached hereto as **Exhibit B** is a copy of the Revised Proposed Order (excluding exhibits) marked against the Proposed Order.

EXHIBIT A

Revised Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
Debtors.	)	**Ref. Docket Nos. 349 & 368**

ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACT PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

Upon the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") for the entry of an order, pursuant to sections 105(a) and 365 of the Bankruptcy Code, authorizing the Debtors to assume the Consumers Contract; and upon consideration of the First Day Declaration, the Boguslaski Declaration and the record of these chapter 11 cases; and the reservation of rights and response to the Motion filed by Consumers Energy Company [Docket No. 368] ("**CEC**"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the Amended Standing Order; and it appearing that this is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these chapter 11 cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be

[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 defined herein shall have the meanings ascribed to them in the Motion.

given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors and is an appropriate exercise of the Debtors' business judgment; and the Purchaser having demonstrated adequate assurance of future performance; and after due deliberation and sufficient cause appearing therefor; **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to assume the Consumers Contract and assign the same to the Purchaser on an "as is, where is" basis. Nothing in this Order shall be construed as limiting CEC's and the Purchaser's right to agree on changes to the Consumers Contract at any time on or after the assignment, to the extent permitted under the Consumers Contract.

3. The Debtors are authorized to enter into an assignment and assumption agreement, in substantially the form attached hereto as Exhibit 1 (the "**Assignment Agreement**") and the consent agreement attached hereto as Exhibit 2, in order to effectuate the assumption and assignment of the Consumers Contract.

4. Upon the assumption and assignment of the Consumers Contract in substantially the form attached hereto as Exhibit 1, all persons are barred from asserting as against the Purchaser any default allegedly arising or occurring before the effective date of the assumption and assignment of the Consumers Contract. Notwithstanding anything to the contrary herein or in the Assignment Agreement, all rights of any person or entity are preserved to assert claims or exercise any other rights against any applicable bond, the Debtors, the Debtors' bankruptcy estates, and/or any other person or entity or property for

unpaid amounts in connection with the 2018 Project,[3] including but not limited to union dues, fringe benefit contributions, related union and collective bargaining agreement obligations, and work performed, equipment rented, goods/services/materials provided, and state law lien rights (together, the "**Claims**"). Any and all rights, remedies, and defenses with respect to the Claims are expressly reserved and preserved.

5. For the avoidance of doubt, the Payment Bond (No. 47-SUR-300093-01-0001) and the Performance Bond (No. 47-SUR-300093-01-0001) (the "Bonds") issued by Berkshire Hathaway Specialty Insurance Company continue to remain in full force and effect with respect to the 2018 Project; however, such Bonds do not extend to the 2019-2020 Projects.[4]

6. The Purchase Price shall constitute property of the Debtors' estate(s) (as applicable) immediately upon payment and shall not be subject to the payment application waterfall or disbursement restrictions described in paragraphs six and seven of the Consumers Project Completion Agreement (the "**Payment Waterfall**").

7. The Consumers Project Completion Agreement remains in full force and effect and is not modified by this Order. All parties to the Consumers Project Completion Agreement (the "**Parties**" or a "**Party**") and the Consumers Contract reserve their rights with respect to performance and/or payment of any obligation that arises with respect to the 2018 Project.

8. For the avoidance of doubt: (1) all funds received by the Debtors under the Consumers Project Completion Agreement will continue to be used in accordance with the Payment Waterfall; (2) CEC's obligation to pay the Termination Fee under the Consumers Project Completion Agreement has already been satisfied; and (3) nothing in

[3] As defined in the Consumers Project Completion Agreement.

[4] As defined in the Consumers Project Completion Agreement.

this Order shall alter the Parties' obligations with respect to the Consumers Project Completion Agreement.

9. Notwithstanding the provisions of Bankruptcy Rule 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, except with respect to the implementation or interpretation of any obligations under the Consumers Contract as between CEC and Purchaser shall be as set forth in the Consumers Contract in accordance with applicable non-bankruptcy law.

EXHIBIT 1

Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSUMPTION AND ASSIGNMENT AGREEMENT (this "Agreement"), dated as of December 20, 2018, is by and between Welded Construction Michigan, LLC (the "Assignor") and Snelson Companies, Inc. ("Assignee" and collectively, the "Parties" and each a "Party').

RECITALS

WHEREAS, on October 22, 2018 (the "Petition Date"), Assignor, along with its affiliated debtor and debtor in possession (collectively, the "Debtors"), filed a voluntary petition for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case No. 18-12378 (KG); and

WHEREAS, the Debtors will move the Bankruptcy Court for entry of Order Authorizing Assumption and Assignment of Certain Executory Contract Pursuant to Section 365 of the Bankruptcy Code (the "Order"), seeking approval of, among other things, the Debtors' assumption and assignment of that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phases 2, 3 and 4* (the "Contract") and the Debtors' ability to enter into this Agreement; and

WHEREAS, the Contract and assignment thereof relates solely to prospective work on project phases to be performed under the Contract and not to work completed previously by Assignor;

WHEREAS, Assignor has now agreed to designate the Contract for assumption and assignment to Assignee, and Assignee has agreement to assume the Contract, all pursuant to the terms and conditions of the Order and this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Parties hereby agree as follows:

AGREEMENT

1. Assignment and Assumption. Subject to entry of the Order and the conditions set forth in this Agreement:

a. Assignor hereby sells, transfers, conveys, assigns, and sets over to Assignee, or its designee, successors, and assigns, all of Assignor's right, title, and interest in and to the Contract.

b. Assignee hereby assumes and undertakes to pay, perform, and discharge all of Assignor's obligations and duties with respect to the Contract.

2. Payment of Purchase Price. Assignee shall, by close of business (Eastern Time) on the next business day following the Effective Date (as defined below) of this Agreement, deliver to Assignor the purchase price for the Contract in the amount of Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Purchase Price") in immediately available funds wired to the account specified by Assignor.

3. No Further Liability of Assignor. Effective as of the Effective Date (as defined below), Assignor shall not have any further obligations or duties with respect to the Contract.

4. Effectiveness of this Agreement. This Agreement shall be effective as of the date of entry of the Order (the "Effective Date"); provided, however, that prior to the Effective Date:

a. the Parties shall have executed this Agreement,

b. the Assignor shall have timely filed a motion in the Bankruptcy Court seeking to assume the Contract pursuant to 11 U.S.C. § 365 in accordance with the terms of that certain *Customer Project Completion Agreement with Consumers Energy Company* dated November 8, 2018, and

c. Consumers Energy Company ("Consumers") shall have delivered to Assignee its written authorization and express consent to Assignee's assumption of the Contract.

5. "As Is, Where Is" Transaction. Assignee hereby acknowledges and agrees that Assignor makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Contract. Without limiting the foregoing, Assignor hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Contract. Assignee further acknowledges that it will accept the Contract "AS IS" and "WHERE IS."

6. Further Assurances. At any time and from time to time after the date hereof, at the request of Assignee, and without further consideration, Assignor shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation or consents and take such other action as Assignee may reasonably request as necessary or desirable in order to more effectively transfer, convey and assign to Assignee Assignor's rights to the Contract.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of law.

8. Jurisdiction. The Parties consent to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters arising under or relating to this Agreement. The Parties hereby irrevocably waive any objection on the grounds of venue, forum non conveniens, or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

9. No Reliance. Each Party represents and warrants that in entering into this Agreement, it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

10. Construction. This Agreement has been drafted through a cooperative effort of all Parties, and no single Party shall be considered the drafter of this Agreement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Agreement were negotiated in good faith and at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Agreement is the free and voluntary act of the Parties.

11. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

[*Signature page follows*]

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Agreement as of the Effective Date.

ASSIGNOR:

Welded Construction Michigan, LLC

By: _____
Name: Frank Pometti
Title: Chief Restructuring Officer

ASSIGNEE:

Snelson Companies, Inc.

By: _____ 12/20/18
Name: Alex R. Epstein
Title: President

EXHIBIT 2

Consent Agreement

CONSENT TO AND EXPRESS APPROVAL OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This CONSENT TO AND EXPRESS APPROVAL OF ASSUMPTION AND ASSIGNMENT AGREEMENT (this "Agreement"), dated as of January 30, 2019, is by and between Welded Construction Michigan, LLC (the "Company"), Snelson Companies, Inc. ("Assignee") and Consumers Energy Company ("Consumers" and collectively, the "Parties" and each a "Party').

RECITALS

WHEREAS, on October 22, 2018 (the "Petition Date"), Company, along with its affiliated debtor and debtor in possession (collectively, the "Debtors"), filed a voluntary petition for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case No. 18-12378 (KG); and

WHEREAS, on December 20, 2018, the Debtors moved the Bankruptcy Court for entry of Order Authorizing Assumption and Assignment of Certain Executory Contract Pursuant to Section 365 of the Bankruptcy Code (the "Order"), seeking approval of, among other things, the Debtors' assumption and assignment of that certain *Contract for Pipeline Construction for the Saginaw Trail Pipeline Project: Phases 2, 3 and 4* (the "Contract"); and

WHEREAS, the Contract and assignment thereof relates solely to prospective work on project phases to be performed under the Contract and not to work completed previously by Company; and

WHEREAS, Company has now agreed to designate the Contract for assumption and assignment to Assignee, and Assignee has agreed to assume the Contract, all pursuant to the terms and conditions of the Order and that certain *Assumption and Assignment Agreement* entered into by Company and Assignee dated December 20, 2018 ("Assignment Agreement"), which is herein incorporated by reference; and

WHEREAS, Assignee and Consumers having agreed to modify certain terms in the Contract as set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Parties hereby agree as follows:

AGREEMENT

1. Consent. Subject to entry of the Order satisfactory to Consumers in form and substance, and the conditions set forth in the Assignment Agreement, Consumers hereby expressly consents and authorizes Company to assume and assign the Contract to Assignee pursuant to the terms set forth in the Assignment Agreement.

2. No Further Liability of Company. Effective as of the Effective Date (as defined in the Assignment Agreement), Company shall not have any further obligations or duties with respect to the Contract except as set forth in the Order.

3. Effectiveness of this Agreement. This Agreement shall be effective as of the date of entry of the Order (the "Effective Date"); provided, however, that prior to the Effective Date:

a. the Parties shall have executed this Agreement;

b. the Company and Assignee shall have executed the Assignment Agreement, which execution occurred on December 20, 2018;

c. the Company shall have timely filed a motion in the Bankruptcy Court seeking to assume and assign the Contract pursuant to 11 U.S.C. § 365 in accordance with the terms of that certain *Customer Project Completion Agreement with Consumers Energy Company* dated November 8, 2018 (the "Completion Agreement"), which filing occurred on December 20, 2018 at Docket No. 349.

4. Contract Modification. The parties acknowledge that certain provisions (as set forth herein) in the Contract need to be modified as between Assignee and Consumers. To the extent that this Agreement modifies the Contract, it shall constitute a binding change order with respect to the Contract. Assignee and Consumers agree that the Contract is modified as follows:

a. The last Paragraph and the associated Termination Notice Table in Part **"18.1 TERMINATION"** of **"SECTION 007213 GENERAL TERMS AND CONDITIONS"** is deleted in its entirety and replaced with the following new paragraph:

"Should the Owner terminate this Contract for reasons other than the breach of the Contractor, for that portion of the Work specifically related to **"SECTION 012000C PHASE 4 – PRICE BREAKDOWN"** Owner shall pay the Contractor a lump sum cost Not-To-Exceed **One Million Two-Hundred Fifty Thousand Dollars ($1,250,000.00)."**

b. **"SECTION 12000B PHASE 3 – PRICE BREAKDOWN"** and **"SECTION 012000C PHASE 4 – PRICE BREAKDOWN"** are deleted and replaced in their entirety with **"SECTION 12000B PHASE 3 – PRICE BREAKDOWN, REV. 1"** (attached hereto as **Exhibit A**) and **"SECTION 012000C PHASE 4 – PRICE BREAKDOWN, REV. 1"** (attached as **Exhibit B**).

c. **"Attachment 005 – NPLA Labor Wage Rates", "Attachment 006- Indicative Wage Rates", and "Attachment 007 – Equipment Rates"** are deleted and replaced in their entirety with **"Attachment 005 – NPLA Labor Wage Rates, Rev. 1"** (attached hereto as **Exhibit C**), **"Attachment 006- Indicative Wage**

Rates, Rev. 1" (attached hereto as **Exhibit D**), **and "Attachment 007 – Equipment Rates, Rev. 1"**(attached hereto as **Exhibit E**).

5. Governing Law. Matters arising under or relating to the Contract, the Assignment Agreement and this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan except that any claims or issues regarding Company's obligations under the Contract, the Assignment Agreement and this Agreement, shall be shall be governed by and construed in accordance with the laws of the State of Delaware.

6. Jurisdiction. The Parties consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any obligations that Company may have under this Agreement, the Contract or the Assignment Agreement. For the avoidance of doubt, matters arising between Assignee and Consumers under or relating to this Agreement, the Contract, or the Assignment Agreement shall be subject to the exclusive jurisdiction of Michigan state and federal courts. The Parties hereby irrevocably waive any objection on the grounds of venue, forum non conveniens, or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law relating to this Agreement. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

7. No Reliance. Each Party represents and warrants that in entering into this Agreement, it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

8. Construction. This Agreement has been drafted through a cooperative effort of all Parties, and no single Party shall be considered the drafter of this Agreement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Agreement were negotiated in good faith and at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Agreement is the free and voluntary act of the Parties.

9. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Agreement as of the Effective Date.

(signature page to follow)

Welded Construction Michigan, LLC

By: DocuSigned by: Frank Pometti
BB71E63317EA4F0...

Name: Frank Pometti

Title: Chief Restructuring Officer

Consumers Energy Company

By: DocuSigned by: PATRICIA K POPPE
C41B32B9AE4C456...

Name: Patricia K. Poppe

Title: President and Chief Executive Officer

Snelson Companies Inc.

By: DocuSigned by: Alex Epstein
15ED37C22119489...

Name: Alex Epstein

Title: President

EXHIBITS MODIFYING CERTAIN
2019-2020 PROJECT BUSINESS TERMS
INTENTIONALLY OMITTED

EXHIBIT B

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
~~In re:~~	)	~~Chapter 11~~
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
Debtors.	)	**Ref. Docket ~~No~~Nos. ~~—~~349 & 368**

ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACT PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE

Upon the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") for the entry of an order, pursuant to sections 105(a) and 365 of the Bankruptcy Code, authorizing the Debtors to assume the Consumers Contract; and upon consideration of the First Day Declaration, the Boguslaski Declaration and the record of these chapter 11 cases; and the reservation of rights and response to the Motion filed by Consumers Energy Company [Docket No. 368] ("**CEC**"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the Amended Standing Order; and it appearing that this is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these chapter 11 cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under 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 defined herein shall have the meanings ascribed to them in the Motion.

circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors and is an appropriate exercise of the Debtors' business judgment; and the Purchaser having demonstrated adequate assurance of future performance; and after due deliberation and sufficient cause appearing therefor; **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to assume the Consumers Contract and assign the same to the Purchaser on an "as is, where is" basis. Nothing in this Order shall be construed as limiting CEC's and the Purchaser's right to agree on changes to the Consumers Contract at any time on or after the assignment, to the extent permitted under the Consumers Contract.

3. The Debtors are authorized to enter into an assignment and assumption agreement, in substantially the form attached hereto as Exhibit 1 (the "**Assignment Agreement**"), and the consent agreement attached hereto as Exhibit 2, in order to effectuate the assumption and assignment of the Consumers Contract.

4. ~~All~~Upon the assumption and assignment of the Consumers Contract in substantially the form attached hereto as Exhibit 1, all persons are barred from asserting as against the Purchaser any default ~~or unpaid obligation~~ allegedly arising or occurring before the effective date of the assumption and assignment of the Consumers Contract. Notwithstanding anything to the contrary herein or in the Assignment Agreement, all rights of any person or entity are preserved to assert claims or exercise any other rights against any applicable bond, the Debtors, the Debtors' bankruptcy estates, and/or any other person or

entity or property for unpaid amounts in connection with the 2018 Project,[3] including~~,~~ but not limited to union dues, fringe benefit contributions, related union and collective bargaining agreement obligations, and work performed, equipment rented, goods/services/materials provided, and state law lien rights (together, the "**Claims**"). Any and all rights, remedies, and defenses with respect to the Claims are expressly reserved and preserved.

5. For the avoidance of doubt, the Payment Bond (No. 47-SUR-300093-01-0001) ~~(the "Bond~~and the Performance Bond (No. 47-SUR-300093-01-0001) (the "Bonds") issued by Berkshire Hathaway Specialty Insurance Company ~~continues~~continue to remain in full force and effect with respect to the 2018 Project; however, such ~~Bond does~~Bonds do not extend to the 2019-2020 ~~Project~~Projects.[4]

6. The Purchase Price shall constitute property of the ~~debtors~~Debtors' estate(s) (as applicable) immediately upon payment and shall not be subject to the payment application waterfall or disbursement restrictions described in paragraphs six and seven of the Consumers Project Completion Agreement (the "**Payment Waterfall**").

7. The Consumers Project Completion Agreement remains in full force and effect and is not modified by this Order. All parties to the Consumers Project Completion Agreement (the "**Parties**" or a "**Party**") and the Consumers Contract reserve their rights with respect to performance and/or payment of any obligation that arises with respect to the 2018 Project~~, including any warranty rights, to the extent that such warranty rights continue in effect~~.

8. For the avoidance of doubt: (1) all funds received by the Debtors under the Consumers Project Completion Agreement will continue to be used in accordance with the

[3] As defined in the Consumers Project Completion Agreement.

Payment Waterfall; (2) ~~the~~CEC's obligation to pay the Termination Fee under the Consumers Project Completion Agreement has already been satisfied; and (3) nothing in this Order shall alter the Parties' obligations with respect to the Consumers Project Completion Agreement.

9. ~~8.~~ Notwithstanding the provisions of Bankruptcy Rule 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof.

10. ~~9.~~ This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, except with respect to the implementation or interpretation of any obligations under the Consumers Contract as between CEC and Purchaser shall be as set forth in the Consumers Contract in accordance with applicable non-bankruptcy law.

[4] As defined in the Consumers Project Completion Agreement.