

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

In re:)	
)	Chapter 11
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
Debtors.)	(Joint Administration Requested)
)	

DEBTORS’ MOTION FOR ENTRY OF AN 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

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby file this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), respectively, pursuant to sections 105(a), 363(b), 503(b)(1), 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), authorizing, but not directing (i) the Debtors to pay certain pre-petition claims, conditioned upon prior customer payment, (ii) the Debtors to honor customer obligations in the ordinary course of business, (iii) to implement control procedures for customer project funding and completion, and (iv) authorizing banks and other financial institutions (the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing, and (v) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Frank Pometti in Support of Debtors’ Chapter*

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.



11 Petitions and First-Day Motions (the “**First Day Declaration**”),² filed contemporaneously herewith, and the *Declaration of Stephen D. Hawkins* in support of this Motion, attached hereto as Exhibit B (the “**Hawkins Declaration**”). In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), 503(b)(1), 1107(a), and 1108 of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

A. General

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

² Each capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration.

3. Additional information regarding the Debtors' business, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

B. Customer Program

(i) Outstanding Projects

4. The Debtors currently are working on portions of five pipeline construction projects (the "**Projects**") for their customers (the "**Customers**"), as follows:

5. **Williams/ASR Project**: The Debtors are working on restoration, cleanup and demobilization efforts at a portion of the Atlantic Sunrise Pipeline (the "**Williams/ASR Project**") for customer Transcontinental Gas Pipe Line Company, LLC, an affiliate of The Williams Companies, Inc. ("**Williams**"). The Debtors constructed a portion of the pipeline, and the pipeline went into service in the past month. As discussed further in the First Day Declaration, upon the completion of the construction work, Williams unexpectedly withheld \$23,563,038.00 from a payment owed to the Debtors for the Williams/ASR Project, and contemporaneously therewith, filed a lawsuit against the Debtors asserting breach of contract, which created acute liquidity issues for the Debtors and concerns in the market about their viability as a going concern.

6. **2018 Consumers Project**: The Debtors are also working on restoration, cleanup, and demobilization efforts on a portion of the Saginaw Trail Pipeline (the "**2018 Consumers Project**") for customer Consumers Energy Company ("**Consumers**"). The Debtors constructed a portion of the pipeline, and the pipeline is now in service.

7. **2019 Consumers Project**: The Debtors are contracted to build a portion of another pipeline for Consumers in 2019 (the “**2019 Consumers Project**”) for which substantive work has not yet begun.

8. **ETP Project**: The Debtors are constructing a portion of the Mariner East Pipelines for Energy Transfer Partners, L.P., as successor to Sunoco Logistics Partners (the “**ETP Project**”). Within the next month, most of the Debtors’ segments of work on the pipeline are scheduled to achieve “mechanical completion,” meaning construction will be concluded other than cleanup and demobilization efforts.

9. **Columbia Gas Project**: The Debtors are constructing portions of the Leach Xpress and Mountaineer XPress Pipelines for affiliates of TransCanada, as successor to NiSource Corporate Services Company/Columbia Pipeline Group and Columbia Gas Transmission, LLC, respectively (the “**Columbia Gas Project**”). The Debtors’ work on the Columbia Gas Project includes work on the Leach XPress Pipeline in Ohio and the Mountaineer XPress Pipeline in West Virginia. Within the next month, the Debtors’ work on the Columbia Gas Project is scheduled to achieve “mechanical completion,” meaning construction will be concluded other than cleanup and demobilization efforts.

(ii) Customer Negotiations

10. The Debtors, in consultation with their professional advisors, have diligently evaluated a range of strategic alternatives to address their near-term liquidity challenges. As a result of these efforts, the Debtors have determined it is necessary to commence these chapter 11 cases and immediately seek approval of a \$20 million debtor-in-possession financing facility (the “**DIP Facility**”) consisting of entirely new money from North American Pipeline Equipment Company, LLC (the “**DIP Lender**”), an entity under common ownership

with the partners of Debtor Welded Construction, L.P., to allow the Debtors the time, breathing room, and resources necessary to continue discussions and negotiations with their Customers to attempt to enter into agreements to permit the Debtors' to complete their ongoing Projects and maximize the value of the Debtors' estates for the benefit of the Debtors' creditors and other stakeholders.

11. The success of these chapter 11 cases hinges on negotiations with Customers to fund the completion of their Projects. As described in the First Day Declaration, the Debtors furnish and pay for all labor, supervision, technical capability, transportation, materials, supplies, and all other items or accessories necessary for the particular Project. Further, the Debtors regularly purchase, lease, and maintain equipment for work on the projects, and the Debtors are oftentimes co-signors with their Customers on the state and federal permits that facilitate the projects. Finally, for most of their projects, the Debtors employ and oversee the work of sub-contractors and vendors (collectively, the "**Sub-Contractors**"), and, under certain contracts, the customer has discretion over which Sub-Contractors are utilized. Typically, the Customers compensate the Debtors pursuant to purchase orders for the work they perform on the Projects. In turn, the Debtors pay the Sub-Contractors for the goods and services provided for the respective Projects.

12. It is critical that the Debtors reach acceptable agreements with the Customers on a project-by-project basis to fund ongoing construction and related costs and to satisfy the claims of Sub-Contractors that have the ability to put mechanics liens on the Projects or otherwise are critical to ongoing Project construction. Sensitive to the concerns expressed by its Customers, the Debtors are negotiating arrangements to receive payments that will be used primarily for completion of their particular Project, as well as certain overhead and other costs.

The chapter 11 process affords the Debtors the breathing room necessary to attempt to reach these arrangements and seek the necessary Court approval to provide Customers with the relief they are requiring to continue to fund the Projects. These arrangements will significantly benefit the Debtors' estates, as well as the Customer, by satisfying significant prepetition claims, avoiding construction delays, and resulting litigation. In addition, the Debtors' rights, and the Customers'—and their sureties'—defenses, will be reserved to address any remaining receivables once the Project is on solid footing. Notably, the Projects are either complete, subject to clean-up and demobilization, or nearing completion in approximately one month, except for one Project for which substantive work has not yet begun. As such, the arrangements are short-term, but nonetheless vital to get the Projects to completion. Without such arrangements, the Debtors will not have the liquidity to complete the Projects, and also anticipate that the Customers will make no further payments, attempt to find alternative resources to complete the Projects, and seek to setoff payments against the cost of completion and payment of claims to satisfy claimants that may be entitled to place a lien on the Projects.

(iii) Customer Project Completion Procedures

13. Typically, the Customers compensate the Debtors on a lump sum basis or pursuant to purchase orders for the work they perform on the Projects. In turn, the Debtors pay the employees, unions, vendors, Sub-Contractors and other project servicers (the “**Critical Customer Obligations**”) for the goods and services provided for the respective Projects. The Debtors must be able to honor their Critical Customer Obligations to complete a Project. Left unpaid, the Critical Customer Obligor may refuse to perform services or supplies goods and could assert claims or liens (including mechanics' liens) against the Customers' pipelines and equipment. If Critical Customer Obligations are not satisfied, it is expected that Customers will

refuse to enter into agreements to allow the Debtors to complete the Projects. Given the Debtors' liquidity crunch and current inability to make such payments, absent authority to pay the Critical Customer Obligations, the likely outcome could be devastating to the Debtors' business and could altogether halt their efforts to complete the Projects.

14. The Debtors estimate that, as of the Petition Date, the aggregate amount by Project of unpaid Critical Customer Obligations that will be required to be satisfied to complete the Projects because the obligor could otherwise place a lien on a Project or is otherwise similarly necessary to pay for the Debtors to complete work on the Project and is not contractually obligated to do so absent payment of pre-petition obligations (the "**Pre-Petition Critical Customer Obligations**") is approximately (each, a "**Pre-Petition Obligations Project Cap**"):

Williams/ASR Project \$66.9 million.

2018 Consumers Project \$13.9 million.³

15. The Debtors are currently in negotiations with the Customers to enter into agreements that will allow for the completion of the Projects (the "**Customer Project Completion Agreements**"). The Customer Project Completion Agreements, in a form substantially as set forth as Exhibit 1 to the Proposed Order, must be fully executed and submitted to the Court on or before October 26, 2018 and include the following material terms:

- a. Payment of all Pre-Petition Critical Customer Obligations, as scheduled or otherwise specified in each Customer Project Completion Agreement;
- b. Payment of all post-petition Critical Customer Obligations required to complete the Project, with such payments to be received prior to such amounts being incurred and the Debtors reserving rights to pay the Critical Customer Obligations in advance or to modify trade terms as necessary in the Debtors' discretion;

³ The Debtors reserve the right to address the 2019 Consumers Project and the ETP Project in subsequent motions.

- c. Payment of certain reasonable overhead and administrative costs of the Debtors until Project completion as specified in each Customer Project Completion Agreement;
- d. All such funds in (a) and (b) above, shall be maintained in a segregated account to be used solely for the payment of the obligations set forth therein., and *the DIP Facility shall not encumber any funds earmarked for payment in connection with a Project*;
- e. Except as set forth in the Customer Project Completion Agreement, all rights of the parties are fully preserved.

16. In light of the urgency required to implement the terms of any Customer Project Completion Agreement, the Debtors further request that the form agreement be approved and that any executed Customer Project Completion Agreement not require Court approval, subject to such agreements being provided to the United States Trustee, the DIP Lender, any applicable Project level surety and any official committee of unsecured creditors appointed in these chapter 11 cases. While the Debtors are requesting that the Customer Project Completion Agreements not require Court approval, to the extent the Debtors or a Customer desires court approval of such agreement, the Debtors request authority to submit it under certification of counsel for expedited approval.

17. Additionally, as a result of these negotiations to date, the Debtors have reached an agreement with Columbia Gas (the “**Columbia Gas Agreement**”), which contemplates Project-specific terms with regard to the Columbia Gas Project within the definition of the Customer Project Completion Agreements. The Debtors respectfully request that the Court approve the Columbia Gas Agreement, through a separate order attached hereto as Exhibit C.

18. Finally, the Debtors expect to reach an interim deal with Williams (the “**Williams Agreement**”) for \$5 million for the Williams/ASR Project and will seek to have it approved through a separate order attached hereto as Exhibit D.

RELIEF REQUESTED

19. By this Motion, the Debtors request the Court to enter the Proposed Order, authorizing, but not directing, the Debtors, subject to execution of an applicable Customer Project Completion Agreement and its terms, to (i) pay the Pre-Petition Critical Customer Obligations in an amount not to exceed each Pre-Petition Obligations Project Cap, (ii) honor the post-petition Critical Customer Obligations in the ordinary course of business, (iii) approve the form Customer Project Completion Agreement and the procedures for expedited approval thereof, and (iv) authorizing banks and other financial institutions (the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing, and (v) granting related relief.

BASIS FOR RELIEF

A. Honoring Pre-Petition Critical Customer Program Obligations Is Warranted under Sections 105(a) and 363(b) of the Bankruptcy Code

20. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” Id.

21. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of

the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. Ionosphere Clubs, 98 B.R. at 175–76. Specifically, the Court may use its power under section 105(a) to authorize payment of prepetition obligations pursuant to the “doctrine of necessity.” See id.

22. The United States Court of Appeals for the Third Circuit recognized the doctrine of necessity in In re Lehigh & New England Railway Co., 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. Id. (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also In re Penn Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); In re Just for Feet, Inc., 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

23. The rationale for the doctrine of necessity—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” Ionosphere Clubs, 98 B.R. at 176; see also Just for Feet, 242 B.R. at 826 (finding that payment of prepetition claims

to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); In re Quality Interiors, Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process.”); Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.”); 2 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 105.02[4][a] (16th ed. 2018) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

24. Accordingly, the Court has authority to authorize the Debtors to pay the Pre-Petition Critical Customer Obligations , to the extent requested herein, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code.

25. If the Debtors are not granted the relief requested herein, they will be left unable to finish the Projects and be faced with converting to chapter 7. On the other hand, granting the conditional relief requested herein will facilitate the allowing the Debtors to reach agreements with their Customers to complete the Projects on the expedited basis that is required by the Debtors' liquidity needs, minimizing the claims against their estates and allowing the Debtors to collect additional funds from the Customers for the benefit of their estates, which will inure to the benefit of all of the Debtors' stakeholders.

26. The Debtors submit that the substantial benefits that would be conferred on the Debtors' estates by the execution of Customer Project Completion Agreements, including the receipt of additional funds from Customers that are a precondition to pay the Pre-Petition Critical Customer Obligations and would be used to pay the Pre-Petition Critical Customer Obligations, provide ample justification for allowing payment of the Pre-Petition Critical Customer Obligations; the Pre-Petition Critical Customer Obligations are essentially being paid by third parties even if nominally passing through or being paid by the Debtors' estates. Accordingly, the Debtors respectfully request the authority, subject to execution of an applicable Customer Project Completion Agreement, to pay the Pre-Petition Critical Customer Obligations in an amount not to exceed the Pre-Petition Obligations Project Cap for each Project as set forth in the applicable Customer Project Completion Agreement.

B. The Debtors Are Authorized to Honor the Post-Petition Critical Customer Obligations in the Ordinary Course of Business

27. Section 363(c)(1) of the Bankruptcy Code provides that "the trustee [or a debtor in possession] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

The Debtors submit that paying the post-petition Critical Customer Obligations is in the ordinary course of business within the meaning of section 363(c)(1) of the Bankruptcy Code and does not require prior bankruptcy court approval. To the extent the Court believes otherwise, however, the Debtors request authority to honor the post-petition Critical Customer Obligations as necessary to implement Customer Project Completion Agreements.

C. Processing of Checks and Electronic Fund Transfers Should Be Authorized

28. The Debtors also request that the Court authorize all applicable Banks to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the foregoing, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

IMMEDIATE RELIEF IS NECESSARY

29. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted within the first twenty-one days of the Petition Date if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The costs of maintaining the Debtors' operations require them to enter into and begin performing under Customer Project Completion Agreements within the first twenty-one days of these chapter 11 cases, or risk having insufficient liquidity to remain in chapter 11. As such, and for the reasons stated herein, there is no question that the Debtors would suffer immediate and irreparable harm if the relief requested herein is not granted. If the relief requested herein is not granted, the Debtors' estates would suffer immediate and irreparable harm derailing the Debtors' chapter 11 efforts.

30. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF ANY APPLICABLE STAY

31. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to finish their Projects and preserve the value to be realized from doing so for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

32. Nothing in the Proposed Order or this Motion (i) 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 the chapter 11 cases, (ii) 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, or (iii) shall be construed as a promise to pay a claim.

NOTICE

33. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors’ thirty (30) largest unsecured creditors (excluding insiders); (v) the Securities and Exchange Commission; and

(vi) counsel to the Debtors' post-petition lenders. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

34. The Debtors have not previously sought the relief requested herein from this or any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully entry of the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 22, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ M. Blake Cleary

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EXHIBIT A

Proposed Order

Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order herewith consistent with Article III of the U.S. Constitution; and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; 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, but not directed, in their sole discretion, to enter into Customer Project Completion Agreements with some or all of the Customers without further order of the Court that require payments up to the following Pre-Petition Obligations Project Caps, provided that each Customer Project Completion Agreement contemplate post-petition payments to the Debtors equal to at least 100% of the amounts to be paid by the Debtors under any given Customer Completion Agreement:

Williams/ASR Project \$66.9 million.

2018 Consumers Project \$13.9 million.

3. The Debtors are authorized to enter into mutually acceptable control procedures with each Customer for Project funding and completion, including but not limited to the establishment of one or more segregated or escrowed bank accounts to hold funds held for funds obtained from Customers under Customer Completion Agreements pending the disbursement of such funds in accordance with this order and the Customer Completion Agreements.

4. To the extent provided for under any Customer Completion Agreement, the Debtors are authorized to pay Critical Customer Obligations in advance or to modify trade terms with counterparties as necessary in the Debtors' discretion.

5. Further Court approval of any Customer Project Completion Agreement entered into between the Debtors and a Customer is not required, but to the extent the Debtors or a Customer desires Court approval of a Customer Project Completion Agreement, the Debtors may submit such stipulation under certification of counsel for expedited approval.

6. The DIP Liens shall not encumber any amounts received by Customers and held in escrow on account of any funding of a Project under the terms of any Customer Project Completion Agreement.

7. The Customer Project Completion Agreements 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.

8. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors should be honored pursuant to this Order, and any such Bank shall not

have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

9. Except as may be expressly set forth in a Customer Project Completion 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.

10. The provisions of this Order shall be binding upon and inure to the benefit of the Customers, 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.

11. Bankruptcy Rule 6003(b) has been satisfied.

12. 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.

13. 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

United States Bankruptcy Judge

EXHIBIT 1

Form Stipulation

[FORM] CUSTOMER PROJECT COMPLETION AGREEMENT

This Stipulation is entered into by and between, on the one hand, _____ (the "Customer"), and, on the other hand, Welded Construction, L.P. (the "Debtor" and with the Customer, the "Parties"), with respect to the following recitals:

WHEREAS, Customer has hired Debtor for _____ (the "Project");

WHEREAS, the United States Bankruptcy Court for the District of Delaware (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. ____] (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 mechanical completion of the Project;

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 Debtors maintain sufficient resources to compensate unpaid Sub-Contractors and timely complete the Project;

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 [_____] (the "Original Contract") and together with this Stipulation, collectively the "Contract Documents"). 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. **Payment Procedures.** [To be agreed by Parties, subject to terms of the Order approving this Stipulation]
4. **Payment of Critical Customer Obligations.** Notwithstanding anything to the contrary herein, the Debtors reserve their rights to pay the Critical Customer Obligations in

advance or to modify trade terms with such counterparties as necessary in the Debtors' discretion.

5. **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 so as to allow for completion of the items reflected on Schedule A by _____ ("Debtor's Work"). Upon completion of Debtor's Work, Customer assumes all of Debtor's obligations under the Contract Documents (including, without limitation, remaining cleanup and permit obligations) and Debtor shall have no further obligations to Customer under the Contract Documents or otherwise.

6. **Additional Amendments.** In addition to the other amendments provided herein, the Parties agree to amend the Original Contract as further set forth on Schedule B to this Stipulation.

7. **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 Project except as set forth herein.

8. **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.

9. **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.

10. **Governing Law.** This Stipulation and all questions relating to its validity, interpretation, performance, and 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 Contract Documents during the pendency of the Debtors' bankruptcy cases.

11. **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.

12. **Effective Date.** This Stipulation shall become effective as of the date of the latter of: its last execution by the authorized representatives of all of the Parties or, to the extent necessary, the approval of the Bankruptcy Court.

13. **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.

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

15. **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.

16. **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.

17. **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.

[SIGNATURE PAGES FOLLOW]

SCHEDULE A TO STIPULATION

DEBTOR'S WORK

SCHEDULE B TO STIPULATION

ADDITIONAL CONTRACT AMENDMENTS

EXHIBIT B

Hawkins Declaration

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

In re:)	
)	Chapter 11
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
Debtors.)	
)	

DECLARATION OF STEPHEN D. HAWKINS IN SUPPORT OF DEBTORS’ MOTION FOR ENTRY OF AN 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

I, Stephen D. Hawkins, hereby declare under penalty of perjury:

1. I am the President and CEO of Welded Construction, L.P. (“**Welded**”), a Delaware limited partnership and an affiliate of each of the above-captioned Debtors. In my capacity as President and CEO, I am familiar with the Debtors’ day-to-day operations, ongoing litigation matters, businesses, financial affairs, employment policies, and books and records.

2. On October 22, 2018 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101–1532 (the “**Bankruptcy Code**”).

3. I submit this declaration (this “**Declaration**”) in support of the *Debtors’ Motion for Entry of an 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*

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.

*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 “**Motion**”).* Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations and finances, information learned from my review of relevant documents, information supplied to me by other members of the Debtors’ management and the Debtors’ professional advisors, or my opinion based on my experience, knowledge, and information concerning the Debtors’ operations and financial condition. I am authorized to submit this Declaration on behalf of the Debtors and, if called upon to testify, I could and would testify competently to the facts set forth herein and in the Motion.²

4. The Debtors, in consultation with their professional advisors, have diligently evaluated a range of strategic alternatives to address their near-term liquidity challenges. As a result of these efforts, the Debtors have begun negotiating arrangements with their Customers to permit the Debtors’ to complete their ongoing Projects and maximize the value of the Debtors’ estates for the benefit of the Debtors’ creditors and other stakeholders, and have reached agreement with Columbia Gas and an interim arrangement with Williams.

5. The success of these chapter 11 cases hinges on these negotiations between the Debtors and their Customers, and immediate approval of the Columbia Gas Agreement and interim arrangement with Williams. The Debtors furnish and pay for all labor, supervision, technical capability, transportation, materials, supplies, and all other items or accessories necessary for any particular Project. Further, the Debtors regularly purchase, lease, and maintain equipment for work on the projects, and the Debtors are oftentimes co-signors with

² The facts set forth in the Motion are true and are incorporated herein by reference.

their Customers on the state and federal permits that facilitate the projects. Finally, for most of their projects, the Debtors employ and oversee the work of sub-contractors and vendors (collectively, the “**Sub-Contractors**”), and, under certain contracts, the customer has discretion over which Sub-Contractors are utilized. Typically, the Customers compensate the Debtors pursuant to purchase orders for the work they perform on the Projects. In turn, the Debtors pay the Sub-Contractors for the goods and services provided for the respective Projects.

6. Throughout the negotiations between the Debtors and their Customers, the Customers have expressed a willingness to fund ongoing construction and related costs on a project-by-project basis only if the Debtors are able to satisfy the claims of Sub-Contractors that have the ability to put mechanics liens on the Projects or otherwise are critical to ongoing Project construction. Toward this end and as required to consummate agreements with Customers that maximize the value of the Debtors’ estates, funds received from Customers will be used primarily for completion of their particular Project, as well as certain overhead and other costs. The Debtors believe that the chapter 11 process affords the Debtors the ability to reach these arrangements and thus seek the necessary Court approval to provide Customers with the relief they are requiring to continue to fund the Projects.

7. These arrangements will significantly benefit the Debtors’ estates, as well as the Customer, by satisfying significant prepetition claims and avoiding Project cancellations prior to mechanical completion, and resulting litigation. Notably, the Projects are either complete, subject to clean-up and demobilization, or nearing completion in approximately one month, except for one Project for which substantive work has not yet begun. As such, the arrangements are short-term, but nonetheless vital to get the Projects to completion. Without such arrangements, the Debtors will not have the liquidity to complete the Projects and anticipate

that the Customers will make no further payments, attempt to find alternative resources to complete the Projects, and seek to setoff payments against the cost of completion and payment of claims to satisfy claimants that may be entitled to place a lien on the Projects, all to the detriment of the Debtors' estates.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed this 22nd day of October, 2018, at Perrysburg, Ohio.

/s/ Stephen D. Hawkins

Stephen D. Hawkins
President and CEO
Welded Construction, L.P.

EXHIBIT C

Proposed Order Approving Columbia Gas Agreement

and that the Court may enter a final order herewith consistent with Article III of the U.S. Constitution; and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, 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 authorized to enter into the Columbia Gas Agreement attached hereto as Exhibit 1 in its entirety.

2. The Debtors are authorized, but not directed, in their sole discretion, to pay Columbia Gas up to the following Pre-Petition Obligations Project Cap with respect to the Columbia Gas Project: \$53.0 million.

3. The Columbia Gas 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.

4. Except as may be expressly set forth in a Columbia Gas 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.

5. The provisions of this Order shall be binding upon and inure to the benefit of Columbia Gas 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.

6. 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.

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

Columbia Gas Agreement

Columbia Gas through itself and through its subcontractors and vendors on the Mountaineer Xpress Project;

WHEREAS the Parties desire to continue work without delay on the Leach Xpress Project and the Mountaineer Xpress Project;

WHEREAS, although the Leach Xpress Project is in-service, the Debtor continues to provide right-of-way restoration services (the "**Leach Xpress Project Work**");

WHEREAS, in order for the Mountaineer Xpress Project to be placed in-service in accordance with applicable federal and state regulatory requirements, the Debtor must finish pipeline construction and achieve certain levels of right-of-way restoration (the "**Mountaineer Xpress Project Work**") and together with the Leach Xpress Project Work, the "**Project Works**");

WHEREAS, notwithstanding Debtor's filing for bankruptcy protection, Columbia Gas and Debtor have reached agreement as to how to proceed on the Leach Xpress Contract and the Mountaineer Xpress Contract, subject to the reservation of rights set forth in this Stipulation for Project Works from and after October 22, 2018, as such contracts are modified or superseded by the provisions set forth in this Stipulation, in order for the Debtor to continue to provide critical labor, materials, and services for these projects by and through itself and its subcontractors and vendors;

NOW, THEREFORE, it is hereby stipulated and agreed, and the Court hereby ORDERS, as follows:

1. The Leach Xpress Contract and the Mountaineer Xpress Contract, as such contracts may have been modified, amended and restated as of the date of filing of this Chapter 11 case (the "**Petition Date**") shall be obligations of the Parties except as expressly set forth

herein and subject to the reservations set forth herein, and such contracts shall continue to be performed by the Debtor.

2. Subject to the exercise of the Debtors' fiduciary duties as debtors-in-possession, the Debtor's ability or right, pursuant to Section 365 of the Bankruptcy Code, to reject either the Leach Xpress Contract or the Mountaineer Xpress Contract (as they may be modified by this Stipulation) as executory contracts on or before the Completion Date (as defined below) shall be suspended and unavailable. At 12:01 am ET the day immediately following the Completion Date, the Debtor's rights under Section 365 with regard to those contracts shall be restored and available for the Debtor to exercise in accordance with its business judgment. As an express condition of this Order and Stipulation, in relation to set-off, accounting, true-up and reconciliation of the costs, expenses and payments due under these contracts, the fact that certain work will be performed and certain payments may have been made post-petition shall not serve to diminish, reduce or limit any of the foregoing rights of either party to those contracts to complete a final accounting. For the avoidance of doubt, the setoff rights of both Parties are fully reserved.

3. Debtor agrees to continue to perform its obligations post-petition under both the Leach Xpress Contract and the Mountaineer Xpress Contract, including as such obligations may be modified by this Stipulation, until the Mountaineer Xpress Project is "placed in service" (gas is flowing) and restoration is 70% complete (the "**Completion Date**"), at which time the Leach Xpress Contract and the Mountaineer Xpress Contract shall each be terminated respectively without any further obligations of the Debtor unless otherwise mutually agreed by the Parties in writing, but without prejudice to either Party's reservation of rights reserved hereunder. Columbia Gas agrees to continue to perform its obligations under both the Leach Xpress

Contract and the Mountaineer Xpress Contract, as such obligations may be modified by this Stipulation, until the later of (a) the Completion Date or (b) the termination of the Leach Xpress Contract and/or the Mountaineer Xpress Contract.

A. Project Accounts

1. The Mountaineer Xpress Project Account. Debtor's bank account at JPMorgan Chase Bank, Account # 3059031962 (ABA Routing No. 072000326) shall be set aside and used exclusively for purposes of disbursing funds on the Mountaineer Xpress Project and shall be identified as the Mountaineer Xpress Project Account (the "**MXP Account**"). The MXP Account shall be used for the deposit, maintenance, and use of all funds dispersed by Columbia Gas in accordance with this Stipulation.

2. The Leach Xpress Project Account. Within 14 days of entry of this Stipulation, Debtor shall establish a new, separate bank account for the deposit, maintenance, and use of all funds dispersed by Columbia Gas in accordance with this Order and Stipulation for the Leach Xpress Account (the "**LXP Account**," together with the MXP Account, the "**Project Accounts**," or individually, a "**Project Account**"). Until such time as the LXP Account is established, the MXP Account shall be utilized for all purposes under this Stipulation to the same extent as if it was in a separate LXP Account and funds earmarked for the LXP Account shall be transferred from the MXP Account to the LXP Account once established.

3. The Project Accounts. Debtor shall not commingle any of the funds deposited by Columbia Gas in either the MXP Account or the LXP Account with any other funds from any other sources. Debtor shall be entitled to transfer from a Project Account to its Huntington Bank Operating Account, as defined in Debtor's Cash Management Motion (the "**Operating Account**"), only such funds as are necessary to cover immediate wire payments for each

respective project, from time to time, in accordance with Paragraph 22 herein. The LXP Account shall be established at a mutually acceptable financial institution to both Columbia Gas and Debtor, and the Office of the United States Trustee for the District of Delaware.

4. All funds in the MXP Account and LXP Account are, and at all times shall remain, the exclusive property and assets of Columbia Gas. For the avoidance of doubt, all funds transferred by Columbia Gas into the MXP Account and the LXP Account for the payment of pre-petition claims or post-petition costs are never, and shall not become, the property of Debtor (or its DIP Lender). In order to make disbursements for the projects following the consent or agreement from Columbia Gas, Debtor may transfer portions of the funds that are in a Project Account to Debtor's Operating Account from which it shall make disbursements for Costs, as set forth more fully below (the "**Columbia Gas Pre-Disbursement Funds**"), but at all times until such disbursements are wired out or paid from the Debtor's Operating Account, those Columbia Gas Pre-Disbursement Funds shall remain the exclusive property of Columbia Gas notwithstanding any comingling of such funds in the Debtor's Operating Account with other funds immediately prior to making project disbursements and such Columbia Gas Pre-Disbursement Funds shall be deemed trust funds belonging to Columbia Gas at all times until such disbursements from Debtor's Operating Account are actually completed.

5. At no time shall Debtor possess any rights, title or interest in and to any of the funds in the MXP Account and LXP Account, and Debtor shall have no rights to use the funds in those Project Accounts, except for the specific and limited purposes of issuing payments of costs incurred and owing to third parties of the respective Leach Xpress or Mountaineer Xpress Project, (with the limited exception that such funds may be used to pay payroll for the respective project personnel of Debtor) (collectively, the "**Costs**"). All payments or distributions that

Debtor shall make from the MXP Account and the LXP Account (through its Operating Account) to pay Costs shall be strictly in accordance with the procedures and authorization provided by Columbia Gas under this Stipulation. Debtor shall use the funds in the Project Accounts solely for paying Costs, unless Columbia Gas expressly consents in writing to another use. No funds deposited or placed in the MXP Account or LXP Account, nor any of the Columbia Gas Pre-Disbursement Funds in the Debtor's Operating Account, shall be subject to sale, assignment, attachment, encumbrance, or forfeiture by any means, and all such funds, are and shall be the separate property of Columbia Gas, and such funds shall be free of and not encumbered by any liens or claims of any DIP lender or any other liens or claims of any other party.

6. Notwithstanding any language in any order authorizing and approving DIP financing to the contrary, the Columbia Gas Pre-Disbursement Funds in the Debtor's Operating Account that were transferred from a Project Account for the specific purpose of making disbursement(s) under or in relation to the Leach Xpress Project or the Mountaineer Xpress Project, respectively, shall be, at all times until such disbursement is actually made from the Debtor's Operating Account, the separate and exclusive property of Columbia Gas free from any and all liens, claims and encumbrances of any other party, including the DIP lender.

7. All payments directly or indirectly from the MXP Account and LXP Account shall be made by Debtor; however, at all times, Columbia Gas shall have "view access only" to the MXP Account and the LXP Account to be able to view payments, balances, activities and use of funds, and the appropriate instruction shall be given to the bank to allow Columbia Gas to be entitled to make inquiries of the banking institution regarding the activity and operation of each such Project Account, including accessing any checks, wire authorizations or other documents

related to such accounts, provided that the Debtors shall be provided a reasonable time to arrange such “view access only” arrangements and make alternative arrangements (or work with Columbia Gas to identify another account) if such access cannot be arranged for the MXP Account.

8. Discontinuing Funding. In the event Columbia Gas believes it needs to discontinue proceeding under either project with the Debtor or otherwise limit Debtor's access to such funds in the Project Accounts promptly to protect its interests, Columbia Gas will promptly give Debtor seventy-two (72) business hours advance notice that it is discontinuing funding ("**Termination Notice**") for one or both projects and releasing the Debtor from any further performance obligations on the applicable project(s). During such period immediately following delivery of a Termination Notice, Debtor shall not withdraw any funds from the Project Account identified in the Termination Notice without obtaining Columbia Gas' written consent. Columbia Gas shall also provide notice to the Court within one (1) business day of its issuance of a Termination Notice. Upon receipt of a Termination Notice, Debtor may elect to discontinue providing work under that contract (or this Order and Stipulation) associated with such project. Notwithstanding issuance of a Termination Notice, Columbia Gas shall be responsible for paying the accrued and unpaid costs to third parties (including the relevant payroll) incurred up to the date of receipt of a Termination Notice, plus the reasonable wind-down costs incurred by the Debtor necessary to depart the project site. In short, following delivery of a Termination Notice, Columbia Gas will continue to pay Debtor's third party pass-through costs incurred by Debtor in winding down on the project site, in a manner to be later negotiated between Columbia Gas and Debtor. The banking institution that shall provide the Project Accounts shall be permitted to rely

on this Stipulation in setting up and granting access to such accounts in accordance with this Stipulation.

B. Pre-Petition Costs and Accounts Payable of the Debtor Associated with the Leach Xpress and Mountaineer Xpress Contracts – Critical Vendor and Employee Payments

9. Following entry by the Court of an Order approving this Stipulation, and in accordance with such Order and this Stipulation, Columbia Gas shall fund those prepetition amounts owed to certain, agreed upon critical vendors, subcontractors and suppliers, as well as reclamation creditors (Section 503(b)(9) claimants) to be paid to certain agreed upon vendors, subcontractors and suppliers, but only to the extent, and to the limits amounts set forth for each such party, as set forth on the agreed-upon attached schedule A, which shall be maintained as confidential, not publicly disclosed and filed under seal with the Court ("**Schedule A**"), and then only to the extent payment to such party identified on Schedule A as a pre-petition critical vendor, subcontractor or supplier or Section 503(b)(9) claimant does not exceed any aggregate cap set by the Court for such payment. Any of the foregoing parties on Schedule A shall only receive payment following execution of the Certification, a copy of which is attached hereto as Exhibit B, and attaching the appropriate documentation in support of and evidencing the obligation to pay such amounts for the appropriate Columbia Gas project, and, by approving this Stipulation, the Court confirms that an executed Certification by any party shall be signed subject to penalties of perjury.. In addition, by approving this Stipulation, the Court authorizes Columbia Gas to pay, at its election, certain prepetition amounts due to certain parties identified as parties on Schedule A who may assert liens on the Leach Xpress Project or the Mountaineer Xpress Project (such parties, together with the critical vendors, subcontractors and suppliers and 503(b)(9) claimants, the "**Critical Vendors**"), in accordance with a process and procedures to be

agreed upon by and between Debtor and Columbia Gas. In order to receive payment as a Critical Vendor, such Critical Vendor shall execute such documents as may be reasonably requested by Columbia Gas and/or Debtor, as well as a Certification.

10. Columbia Gas has only agreed and committed to fund such payments for prepetition obligations of Debtor to critical vendors, subcontractors and suppliers and 503(b)(9) claimants as set forth on Schedule A for each project, and Columbia Gas' obligation extends solely to the maximum amount set forth on Schedule A. To the extent that satisfactory documentary evidence in the sole discretion of Columbia Gas demonstrates any such party, or any other party not listed on Schedule A, is entitled to an amount in excess of that set forth on Schedule A for prepetition work, Columbia Gas, at its sole discretion and consent, may agree to increase such funding beyond such scheduled amounts to pay such party, subject to any aggregate cap set by the by Court for such payments. In the event that Debtor disagrees to the payment of a larger amount than scheduled, no such payment may be made until such dispute between Columbia Gas and the Debtor is resolved by this Court. Otherwise, the payments to Critical Vendors in accordance with the Court's order approving this stipulation shall be strictly in accordance with such order and this Stipulation as it relates to the two projects of Columbia Gas.

11. Within 2 days of the entry of the order approving this Stipulation by the Bankruptcy Court, Columbia Gas will deposit \$42,917,394.42 into the MXP Account and \$5,135,061.11 into the LXP Account for payment to the Critical Vendors in accordance with the Order approving this stipulation (the "**Critical Vendor Order**") with respect to each project as set forth herein. Within five (5) business days following receipt of an executed Certification and such other materials required to be submitted along with it by each Critical Vendor (collectively,

the "**Certification Submission**") as required hereunder, Debtor shall notify Columbia Gas and such Critical Vendor in writing of the specific amount that it has confirmed is due and payable to that Critical Vendor for its pre-petition obligation. Within five (5) business days of that notification from Debtor, Columbia Gas shall inform Debtor and the Critical Vendor if Columbia Gas is satisfied that the Certification Submission adequately demonstrates that the amount requested by the Critical Vendor is the correct amount owed and relates to either the Leach Xpress Project or the Mountaineer Xpress Project, as applicable. In the event there is disagreement on the amount due prepetition or as to whether such amount is properly allocable to the Leach Xpress Project or the Mountaineer Xpress Project that has arisen by and between the Debtor, Columbia Gas, and/or a Critical Vendor that is unable to be resolved by those parties, the Court shall resolve any differences and determine the amount due, in an amount not to exceed the Schedule A amount for such Critical Vendor unless Columbia Gas consents to pay a higher amount. Whether the amount to be paid to that Critical Vendor is determined by consent or Court ruling (such amount, the "**Payment Amount**"), Columbia Gas shall authorize the Payment Amount to be paid by the Debtor from the respective Project Account (by transferring such amount to the Operating Account from the respective Project Account, and disbursement therefrom) which, upon receipt by that Critical Vendor, shall (i) obligate that Critical Vendor to continue providing post-petition services, supplies, equipment or work, as the case may be, on either the Mountaineer Xpress Project or the Leach Xpress Project, respectively, and (ii) release any and all prepetition claims and/or mechanics/materialmen liens or right to lien Columbia Gas' project, property or improvements. To the extent any liens have been recorded, such Critical Vendor shall be required to execute lien releases requested by Columbia Gas upon the delivery of the Payment Amount as a condition of receiving payment.

12. Debtor shall provide Columbia Gas a certification of the amount that will become due and payable for prepetition labor provided by its employees, staff and supervisors specifically assigned to and/or working on-site for the Mountaineer Xpress Project and Leach Xpress Project (the "**On-Site Personnel**"), and Columbia Gas shall fund an amount to be determined prior to the hearing to approve this Stipulation to the Debtor's Paylocity Account on account of the Mountaineer Xpress Project and an amount to be determined prior to the hearing to approve this Stipulation to the Debtor's Paylocity Account on account of the Leach Xpress Project for purposes of paying those employees the unpaid amounts due to the On-Site Personnel for their unpaid prepetition time and wages. Debtor shall (i) promptly obtain Court approval to make such payment, to the extent required and not already obtained in connection with "first day" relief, (ii) promptly pay such personnel these prepetition amounts following receipt of the later of Court authorization or funding, (iii) promptly pay FICA, withholding and such other taxes from such funds associated with the payment to the On-Site Personnel, and (iv) promptly pay such other amounts due to union or pension accounts on behalf of such On-Site Personnel for these specific unpaid prepetition time and wages.

13. Debtor shall provide Columbia Gas a certification of the amount of union dues and benefits ("**Union Dues**") accrued before the Petition Date but not yet due for On-Site Personnel. Columbia Gas shall provide funding to the MXP Account and to the LXP Account for the purpose of paying the unpaid and accrued but not yet due Union Dues to which Columbia Gas agrees is accrued and unpaid prior to the Petition Date (or the Court so concludes in the event of a dispute). Payments made by Columbia Gas pursuant to this paragraph are subject to the accounting and reconciliation process set forth in paragraph 23.

14. Subject to any other limitation placed by the Bankruptcy Court, in the event that it becomes necessary that Columbia Gas directly pay any portion of the Payment Amount to Debtor's Critical Vendors in order for them to continue to provide timely and uninterrupted critical labor, materials or services, Columbia Gas may, at its sole discretion, directly pay any portion of the Payment Amount to such Critical Vendors. Payments made to Critical Vendors under this paragraph shall be deemed for all purposes as if Columbia Gas first paid Debtor, and Debtor paid said Critical Vendors. Upon request, Columbia Gas will provide documents supporting its payments to said Critical Vendors. Payments made by Columbia Gas under this paragraph shall be subject to the same requirements of Debtor and Critical Vendors as Critical Vendor payments made by Debtor above, but Columbia Gas shall be responsible for any Certification Submissions from Critical Vendors relating to payments made to Critical Vendors without Debtors' express prior written consent and agreement to obtain Certifications from such Critical Vendors.

C. Going Forward Post-Petition Services Under the Mountaineer Xpress Contract and the Leach Xpress Contract

15. Columbia Gas and Debtor have agreed to modify the contractual requirements of the Mountaineer Xpress Contract and the Leach Xpress Contract herein subject to the reservation of rights set forth in this Stipulation and solely as to work taking place from and after October 22, 2018 to the extent that all services and work provided by the Debtor from and after the Petition Date shall be on a cost-incurred basis only (the "**Go-Forward Work**"). For the avoidance of doubt, Columbia Gas shall be obligated to pay and Debtor agrees to accept as payment under each of those respective contracts for all Go-Forward Work, incurred or performed after the Petition Date, by paying Debtor's Costs for such project on a pass through basis, without any mark-up, increase or factor. For the avoidance of doubt, this means Columbia

Gas shall pay or otherwise reimburse Debtor for the Go-Forward Work by paying Costs, which means those amounts due for all unaffiliated third parties for labor, services, equipment, supplies, delivery or other related costs (in addition to the Debtor's field personnel as described below) shall be funded by Columbia Gas through a Project Account and paid to such third party by Debtor by transferring only those funds necessary to cover immediate wires from its Operating Account to pay such Costs. This shall not include rental costs for equipment owned by Debtor. This amount specifically includes those amounts that must be paid to Debtor's field personnel for each project, whether supervisor, project manager or laborer, as well as the associated fees, taxes or other withholdings required to be paid from such wages or payments to employees, and overhead as may be agreed by the parties, such amounts shall be:

- i. The actual labor costs paid by Debtor for field personnel working on Mountaineer Xpress Project and Leach Xpress Project, consistent with the prevailing applicable wage scale for similarly skilled employees in the pipeline construction industry and as reflected on Debtor's certified payroll; for non-union employees, there shall be no base-pay wage increases without the consent of Columbia Gas;
- ii. The actual amount of *per diems* paid by Debtor for field personnel, which, for union personnel, shall not exceed amounts required by applicable collective bargaining agreements;
- iii. The actual amount paid by Debtor under its subcontracts and purchase orders with subcontractors and vendors regarding goods and services utilized in the field, including rented equipment, fuel, supplies, materials, and consumables; and
- iv. The actual amount of insurance premiums paid by Debtor to provide the required insurance coverage for equipment owned by Debtor.
- v. The actual amount paid by Debtor for permits, licenses, inspections and other charges specifically connected with the Work.
- vi. The actual amount paid by Debtor for sales, use, gross receipts or similar taxes imposed by a governmental authority that arise directly out of performance of the Work.
- vii. The actual cost to Debtor of workers compensation and business automobile coverage premiums associated with work performed by field personnel.

- viii. The cost of Debtor's general overhead that is allocable to both Projects, which the parties agree shall be \$25,000 per week; the Debtor and Columbia Gas expressly agree that the actual costs for the Go-Forward Work shall not and will not include any charges, fees, or rates for the use of equipment owned by the Debtor on the Projects. .

16. Debtor shall provide the required insurance that is to be carried under each of the Projects, and the actual costs incurred for such insurance post-petition shall be reimbursed by Columbia Gas up to the Completion Date or the point that work discontinues on the respective Project.

17. On a weekly basis, Debtor shall provide a one week cash forecast, listing the amount of cash costs it expects to accrue on each Project divided into the following categories: (a) labor; (b) third-party suppliers and vendors; (c) subcontractors; (d) union disbursements; and (e) insurance and taxes (the "**Cash Forecast**"). For the first two weeks after the Bankruptcy Court's approval of this Order and Stipulation, Debtor shall submit an invoice for the Cash Forecast and a separate invoice for the \$25,000/week overhead costs ("**Overhead**") and Columbia Gas shall pay said invoices within three (3) business days of its receipt by depositing funds into the respective Project Account (except for the Overhead which shall be paid directly into Debtor's Operating Account) for the payment of the going forward, post-petition costs requested by the Cash Forecast and Overhead. Columbia Gas reserves the right to increase the amount of funding as the respective project may require, in the event it proves Debtor's Cash Forecast is incorrect.

18. On a weekly basis, Debtor shall provide a reconciliation of its two week-behind actual spend (the "**Behind Actual Spend**"). The form and substance of such reconciliations shall be satisfactory to Columbia Gas, and shall minimally include paid invoices, a certified payroll, and other applicable back-up documentation. As otherwise required under each project's contract, Debtor shall continue to secure payment waivers and lien releases from its

subcontractors and vendors pursuant to the terms of the Mountaineer Xpress Contract and the Leach Xpress Contract, including as subject to the terms herein for payment of Critical Vendors.

19. For all payments Debtor seeks from Columbia Gas after its second Cash Forecast, Debtor shall submit an invoice based on the net of its Cash Forecast and Behind Actual Spend, and an invoice for the Overhead amounts due. Unless Columbia Gas believes such invoiced amount is incorrect, based on progress, productivity and weather issues that may impact the required amounts, Columbia Gas shall pay said invoice within three (3) business days of its receipt by depositing funds into the respective Project Account (or Debtor's Operating Account as it relates to Overhead payments) for the payment of the going forward, post-petition costs requested by such invoices. To the extent Columbia Gas has concerns about the invoiced amounts, Columbia Gas and Debtor shall negotiate in good faith to agree upon a proper amount to invoice and fund into the respective bank accounts. Columbia Gas reserves the right to increase the amount of funding as a project may require, in the event it proves Debtor's Cash Forecast is incorrect.

20. As a result of this Stipulation, the Mountaineer Xpress Contract and the Leach Xpress Project are hereby modified for work performed from and after October 22, 2018 such that all Work conducted from and after such date on those respective projects shall be paid on a cost-reimbursable basis only (*i.e.*, Costs). Notwithstanding all payment provisions in the Mountaineer Xpress Contract or the Leach Xpress Project to the contrary, including but not limited to the payment schedule set forth in Schedule B or otherwise to those respective contracts, any and all payment provisions that provide for payment of minimum contract amounts and/or payment to Debtor based on the construction of each linear foot of pipeline, are

hereby superseded and modified with respect to Work conducted from and after the Petition Date to only require payment of Costs.

21. Columbia Gas's payments on a going forward basis under the Mountaineer Xpress Contract made under this Subpart C shall not exceed \$18,000,000, unless Columbia Gas consents otherwise. Columbia Gas's payments on a going forward basis under the Leach Xpress Contract made under this Subpart C shall not exceed \$1,000,000, unless Columbia Gas consents otherwise.

22. In order for Debtor to timely pay its accrued receivables from the Go-Forward Work (on a cost-incurred basis only) and to pay the prepetition amounts owed by the Debtor in accordance with this Stipulation, Debtor shall be able to move certain funds deposited into the Project Accounts by Columbia Gas into Debtor's Operating Account, but only to the extent such funds are needed to cover actual disbursements being made within the next two business days. Debtor may only move such funds incrementally, on an as-needed basis.

23. When Debtor no longer has work to perform on either the Mountaineer Xpress Project or the Leach Xpress Project, Columbia Gas and Debtor shall complete a final accounting and reconciliation of all payments made under each respective project to which the contract applies. Debtor shall provide documentary support to Columbia Gas in relation to payments, vendor invoices and other disbursements, as may be needed, in support of the reconciliation. This reconciliation shall include an assessment of the sources and uses of funds under this Stipulation, regardless of whether cash of Columbia Gas, retention, or other amounts, as compared to the obligations of the respective Parties under the Mountaineer Xpress Contract or the Leach Xpress Contract (as both modified herein), and all rights of the Parties with respect to those contracts and the obligations for payment are fully reserved. Should such accounting and

reconciliation reflect that Debtor, subcontractors, or vendors receiving payments were overpaid, Columbia Gas will seek Debtor's cooperation in recovering such overpayments. Debtor will use commercially reasonable efforts as a debtor-in-possession to promptly provide such cooperation.

24. In the event that Columbia Gas concludes that any amounts it has funded in either the MXP Account or the LXP Account in regards to the Critical Vendors, Prepetition Payroll, Go Forward Work, or any other amounts are in excess of what is actually needed, Columbia Gas may request that Debtor return such monies from those Project Accounts, or from the Operating Account or any other Debtor Bank Account (as defined in Debtor's Cash Management Motion) if already transferred thereto. Debtor shall promptly transfer such funds following the request of Columbia Gas for the return of its funds unless it has a good faith dispute with respect to such request, in which case the Bankruptcy Court shall resolve such dispute that the parties are otherwise unable to resolve.

25. Descoping and Taking Over Subcontracts or Supply Agreements: Lifting of Stay. Columbia Gas shall retain its contractual rights and remedies to descope Debtor from the Leach Xpress Contract and/or the Mountaineer Xpress Contract if, in Columbia Gas' sole discretion, it concludes such descoping is a compelling business alternative for the respective project to achieve "In-Service" (*i.e.*, commencement of gas flow) objectives, provided that Columbia Gas shall give Debtor seventy-two (72) business hours advance notice that it is descoping. Columbia Gas shall also retain the right to take assignment or control of Debtor's subcontracts from Debtor related to the work descoped as may be permitted under the Leach Xpress Contract or the Mountaineer Xpress Contract. By entry of the order approving this Stipulation, the Court determines that, to the extent necessary, the automatic stay under Section 362 of the Bankruptcy Code is hereby lifted to allow Columbia Gas to exercise its right, at any time, to (i) descope

Debtor of any or all portion(s) of Work remaining to be performed, and/or (ii) take over or direct Work under any or all of Debtor's contracts or subcontracts for either project. Notwithstanding the foregoing and Paragraph 3 above, to the extent the aforementioned partial descoping causes an undue burden on Debtor, Debtor may seek consent from Columbia Gas or, if necessary, prompt permission from the Bankruptcy Court to terminate all remaining performance obligations under the Project(s) without further liability for the remaining Work. The Parties reserve all of their respective rights against each other under the Leach Xpress Contract and the Mountaineer Xpress Contract regarding outstanding and future change order requests, to the extent that the work or services are not otherwise paid by Columbia Gas, whether prepetition or post-petition through this Stipulation, or modified as set forth in this Stipulation, and the respective rights pertaining to unpaid contract value, including without limitation for claims for excess payments or expenses either party incurred or damages suffered, if any.

26. This Stipulation and the order approving this stipulation, together with the underlying project contracts, constitute the complete express agreement of the Parties and no modification or amendment to this Order and Stipulation shall be valid unless it is in writing, signed by the Parties and approved by the Bankruptcy Court.

27. This Stipulation shall remain binding on the Parties hereto and all of their successors and assigns, including but not limited to, it shall be binding any trustee or successor trustee appointed for Debtor's estate, regardless of whether appointed in this case under chapter 11 of the Bankruptcy Code or chapter 7 of the Bankruptcy Code.

28. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which, when fully combined, shall be deemed an original and all of which together shall constitute one and the same instrument.

29. This Stipulation shall become effective immediately upon entry by the Court of an order approving this Stipulation.

30. The Parties agree that the Bankruptcy Court shall retain jurisdiction with respect to all disputes arising from or interpreting or enforcing the order approving this Stipulation. Such order and this Stipulation, and all questions relating to their validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Delaware; however, Work on the project and all rights of parties with respect to the work and services provided for such projects shall be subject to the applicable governing law under the relevant choice of law provisions for such services and rights.

31. 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 Order and Stipulation.

32. Following entry by the Court of an Order approving this Stipulation, and in accordance with such Order and this Stipulation, the Debtor, pursuant to that certain Settlement Agreement and Mutual Release between the parties effective May 21, 2018 relating to the Leach Xpress Project, shall be entitled to submit an invoice to Columbia Gas for a total of \$7,000,000 (for items noted in Paragraph 1(c) and (d) of the aforementioned Settlement Agreement and Mutual Release) (“**Leach Xpress Project Settlement Payment**”). Columbia Gas shall fund the Leach Xpress Project Settlement Payment into the Project Account within five (5) days of receipt of said invoice. The Leach Xpress Project Settlement Payment shall remain in the Project Account and the Leach Xpress Project Settlement Payment shall not become payable to Debtor until the parties agree that the Completion Date for the Mountaineer Xpress Project has occurred or been achieved by Debtor (or, in the event of a dispute regarding whether it has occurred, the

Court so rules), after which date, the Debtor can transfer the Leach Xpress Project Settlement Payment into its Operating Account for its general use. The parties agree that the conditions precedent for which Debtor shall be entitled to the Leach Xpress Project Settlement Payment is hereby amended such that the condition precedent is now Debtor's achieving the Completion Date for the Mountaineer Xpress Project. If the Debtor does not achieve the Completion Date, the Leach Xpress Project Settlement Payment shall be returned to Columbia Gas.

STIPULATED and AGREED to this 22nd day of October, 2018.

Welded Construction, L.P.

By: _____

Print: _____

Date: _____

Columbia Gas Transmission, LLC

By: _____

Print: _____

Date: _____

By: _____

Print: _____

Date: _____

SCHEDULE A-1

MXP Critical Vendors

[FILED UNDER SEAL]

SCHEDULE A-2

LXP Critical Vendors

[FILED UNDER SEAL]

EXHIBIT B

Certification

CRITICAL VENDOR CERTIFICATION

_____ (“**Vendor**”), by and through the signature of its duly-authorized officer below, hereby agrees, declares and acknowledges, subject to penalty of perjury, that:

1. Vendor has provided actual services, work or supplies (the "**Services**") to the [Mountaineer Xpress Project Segment 1 / Leach Express Project Segment __] on or before October 22, 2018 and which amount due for such Services remains due and owing in the amount of \$ _____ (the "**Prepetition Unpaid Amount**"), which Vendor hereby avers is owed to it for work done on either (check which project to which such Services were provided)

- a. _____: Segment 1 of the pipeline construction project owned by Columbia Gas Transmission, LLC ("**Columbia Gas**") located on real property in _____ (the "**Mountaineer Xpress Project**") under its contract with Debtor Welded Construction, L.P. ("**Debtor**"); or
- b. _____: Segment __ of the pipeline construction project owned by Columbia Gas located on real property in _____ (the "**Leach Xpress Project**") under its contract with Debtor.

Vendor avers that such Services were provided prior to the commencement by Debtor of its chapter 11 case and it has not been paid for such Services.

2. Vendor declares that the invoices, back-up and other materials that establish the above-mentioned amount that is due and owing for the Services, that it hereby submits in support of this Certification is true and correct.

3. Debtor is permitted to pay the Prepetition Unpaid Amount directly to Vendor only in accordance with the attached Order Authorizing Certain Critical Vendor Payments (the

“Order”), and Vendor acknowledges that its receipt and acceptance of payment of the Prepetition Unpaid Amount constitutes its consent and agreement to be bound by such Order and the jurisdiction of the bankruptcy court presiding over Debtor's case.

4. Vendor meets the criteria for payment specified in the Order and is receiving the Prepetition Unpaid Amount subject to, and will comply with, and be bound by, all of the terms of the Order.

5. By accepting payment of the Prepetition Unpaid Amount, and subject to continuing timely payments for work and services provided, Vendor understands and agrees that an express condition of the payment to it of the Prepetition Unpaid Amount is its agreement to continue providing work, services and supplies, as the case may be, until the Project is complete. Vendor therefore covenants and agrees that, upon receipt of payment of the Prepetition Unpaid Amount, it shall remain on-site or otherwise continue to perform, provide, lease or deliver its work, services, equipment or supplies for the Project(s) for which it is accepting such payment of the Prepetition Unpaid Amount until either (i) the completion of said Project(s), or (ii) it is notified in writing by Debtor (or Columbia Gas) that it is no longer needed to provide work, services and/or supplies on or for said Project(s);

6. Vendor agrees to copy Columbia Gas, at the contact information provided below, on any and all correspondences, notices, and other transmissions notifying Debtor that Debtor has failed to pay Vendor for work or services from and after the Petition Date that is has provided on the Project(s);

Contact Information

Name:

Address:

Telephone Number:

Fax:

E-mail:

7. Vendor agrees that any payment received by it pursuant to the Order is subject to accounting and a final reconciliation, and Vendor agrees that it will promptly cooperate with final accountings and reconciliations. Upon such true-up of accounts or reconciliations, Vendor agrees to refund to the Debtor or Columbia Gas, as applicable, any amounts it has been overpaid. Vendor agrees any reconciling of the amounts paid for work performed or services provided for either Project shall be made without regard to whether such payments were made pre-petition or post-petition, and the fact that such payments may have been made post-petition or accrued post-petition shall not limit or prevent taking such payments into account or setting-off such payments against any pre-petition obligations or work under the contracts, for purposes of establishing final reconciliation, set off or true-up of payment obligations;

8. **Waiver and Release.** Upon receipt of payment of the Prepetition Unpaid Amount, Vendor agrees that it has been paid in full for all work on the Project(s) up to and including the Petition Date, October 22, 2018, and, by executing below, waives, releases, and relinquishes any rights, claims or liens it has or may have against Columbia Gas and the Project(s) and any of its affiliates, including without limitation it releases, waives and relinquishes any and all rights, claims and rights to assert such claims, demands, liens and rights to assert such liens(including but not limited to mechanics' liens under the laws of the State of West Virginia), claims for relief, and causes of action, arising out of or relating to performing work, supplying labor, furnishing materials, or providing services on or connected to either Project, completed up to the Petition Date of Debtor's commencement of its chapter 11 case (the "**Waiver and Release**"). For the avoidance of doubt, the Waiver and Release applies to all of (but not limited to) the following: facts, acts, events, circumstances, changes, constructive or

actual delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to Debtor's commencement of its chapter 11 case, whether known or unknown. Vendor acknowledges that acceptance of the Prepetition Amount represents payment in full for all work performed, labor supplied, materials furnished, and services provided on the Projects up to Debtor's commencement of its chapter 11 case. This Waiver and Release is freely and voluntarily given, and Vendor acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release. Vendor further agrees that the making and receipt of the Prepetition Amount and execution of this Waiver and Release shall in no way release Vendor from its continuing obligations with respect to the completion of any work remaining undone on the Project, punch list work, warranty and guaranty work, and any other obligations of the Vendor to Debtor. Vendor agrees to indemnify and to save Columbia Gas harmless from and against any and all claims, causes of action, costs, expenses, damages, and liability arising from or in connection with any liens or claims asserted by any third party supplying labor, material, or services to Vendor. Additionally, Vendor agrees to indemnify and to save Debtor harmless from and against any and all claims, causes of action, costs, expenses, damages, and liability arising from or in connection with any liens or claims asserted by any third party supplying labor, material, or services to Vendor on account of work performed for the Mountaineer Xpress Project and the Leach Xpress Project.

[VENDOR COMPANY NAME]

By: _____

Name: _____

Title: _____

Date: October ____, 2018

EXHIBIT D

Proposed Order Approving Williams Agreement

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 Programs Motion**”) and the declaration of Stephen D. Hawkins submitted in connection with the Customer Programs Motion (the “**Hawkins Declaration**”); and it appearing from the First Day Declaration, the Customer Programs Motion, the Hawkins Declaration, and the record of the October [23], 2018 hearing in these chapter 11 cases that the Commitment Letter and the relief provided for herein is in the best interest of the Debtors, their estates, and their creditors, and an appropriate exercise of the Debtors’ business judgment; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Commitment Letter is approved, and the terms and conditions of the Commitment Letter are incorporated into this Order as if fully set forth herein. Notwithstanding anything to the contrary in the Commitment Letter, the amount of the Estimated Prepayment shall be \$4,600,000, which payment shall be made to the Debtors by wire transfer of immediately available funds as soon as reasonably practicable after the entry of this Order and in any event not later than one (1) business day following the date of the entry of this Order.

2. Notwithstanding any language in any order authorizing and approving post-petition financing in these chapter 11 cases, the funds provided by Transco under the Commitment Letter (the “**Transco Funds**”) shall be free of and not encumbered by any liens or claims under any such financing or any other liens or claims of any other party. Unless otherwise agreed to in writing by Transco, the Transco Funds shall be used by the Debtors solely

to fund the Atlantic Sunrise Pipeline project for the period from October 22, 2018 through and including October 28, 2018.

3. The Commitment Letter 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.

4. Except as may be expressly set forth in the Commitment Letter, 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; or (c) shall be construed as a promise to pay a claim.

5. The provisions of this Order shall be binding upon and inure to the benefit of Transco 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 these chapter 11 cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case.

6. The Debtors are authorized to execute and deliver such other instruments or documents and take such other action as may be necessary or appropriate to implement and effectuate the relief granted by this Order.

7. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure 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.

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

Dated: October ____, 2018
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge

EXHIBIT I

Williams Agreement



GAS PIPELINE — TRANSCO

2800 Post Oak Boulevard (77056) -or-
P.O. Box 1396
Houston, Texas 77251-1395

October 21, 2018

Welded Construction, L.P.
26933 Eckel Road
Perrysburg, OH 43551
Attention: Mr. Stephen Hawkins

Re: Williams Atlantic Sunrise – Interim Go Forward Work Structure with Welded
(Spreads 5, 6, and 7) (Revision 1)

Steve,

This morning, Transcontinental Gas Pipe Line Company, LLC ("Transco"), Welded Construction, LP ("Welded") and the surety of performance ("Chubb") and payment bond no. 8219-24-58 (issued in connection with the work, material and labor to be provided on Transco's Atlantic Sunrise – Spreads 5, 6, and 7, or the "Project") met via phone conference to discuss a path forward for continuing the work under Transco-Welded contract 2016-0001 (the "Contract") between October 22, 2018 and October 29, 2018.

During the phone call Welded indicated its plans to file for Chapter 11 bankruptcy protection in federal court in Delaware on October 22, 2018. Welded also requested pre-payment to cover Welded's internal costs and expenses of providing work, as well as Welded third-party subcontractor, vendor, materialmen, and supplier costs, expenses, profit and invoices for work, labor, material, and rentals (currently estimated to be \$5,000,000) (the "Estimated Prepayment"). Subject to the conditions below, Transco will make the Estimated Prepayment on October 23, 2018 immediately upon the entry of an agreeable order as set forth below.

The payment is for the benefit of the Project only and to be applied only to costs incurred during the time period stated above. Said amount is not to be construed as payment for, or payment which can be used for, payment of past due amounts owed by Welded in arrears, or payment of amounts Welded owes in connection with work performed for Welded's other clients. The pre-payment will be subject to a true up at the end of the week; in the event there is a remainder, that amount will be used for future work on the Project.

If Welded uses any portion of payment to pay past due amounts owed to its subcontractors, vendors, or suppliers, or debts or work associated with projects for other clients and, as a result, short pay invoices due on the Project, such short paid subcontractors, vendors, or suppliers would be protected under the payment bond provided in connection with the Project. Further, Transco is not compromising its ability to enforce the Project bond with respect to amounts Welded subcontractors, vendors, or suppliers may claim in relation to work previously performed or materials or equipment previously provided.

Finally, Transco's payment is subject to the entry of a mutually agreeable order by the bankruptcy court approving Transco's pre-payment as described above or the execution of a mutually agreeable Customer Project Completion Agreement. Thank you for sending the draft Customer Project Completion Agreement and proposed Order. We will have comments back to you as soon as reasonably possible.

We will send this same information on letterhead as soon as we can; it may be first thing tomorrow morning.

A handwritten signature in black ink, appearing to read 'E. Kirchen', written in a cursive style.

Evan Kirchen
Vice President of Project Execution – Atlantic Gulf
Transcontinental Gas Pipe Line Company, LLC