

**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))		
)	(Jointly Administered))		
Debtors.)	Ref. Docket Nos. 12 & 13)		

**ORDER, AUTHORIZING, BUT NOT DIRECTING,
THE DEBTORS TO ENTER INTO THE COLUMBIA GAS AGREEMENT**

Upon consideration 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 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 Program Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order authorizing, but not directing, the Debtors to enter into the Columbia Gas Agreement, attached hereto as Exhibit 1; and upon consideration of the First Day Declaration and the Hawkins Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this 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)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Customer Program Motion.



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 Critical Vendors 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.

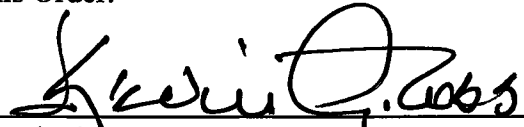
4. Except as may be expressly set forth in a Columbia Gas Agreement, nothing in this Order, nor as a result of any payment made pursuant to this Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code, or an admission as to 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: October 23 2018
Wilmington, Delaware



Kevin Gross
United States Bankruptcy Judge

EXHIBIT I

Columbia Gas Agreement

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

In re:)	Chapter 11
WELDED CONSTRUCTION, L.P.,)	Case No. 18-12378 (KG)
Debtor.)	
In re:)	Chapter 11
WELDED CONSTRUCTION MICHIGAN, LLC,)	Case No. 18-12379 (KG)
Debtor.)	

**STIPULATION OF WELDED CONSTRUCTION, L.P.
AND COLUMBIA GAS TRANSMISSION, LCC**

Debtor Welded Construction, L.P. (the “**Debtor**”) and Columbia Gas Transmission, LLC (“**Columbia Gas**,” and together with the Debtor, the “**Parties**”) hereby stipulate and agree (subject to DIP Lender written consent and Court approval) (this “**Stipulation**”) as follows:

WHEREAS the Debtor is the General Contractor on certain portions or “spreads” of two natural gas pipeline construction projects owned by Columbia Gas, located on real property in West Virginia (the “**Leach Xpress Project**” and the “**Mountaineer Xpress Project**”);

WHEREAS pursuant to its contract with Columbia Gas dated April 2, 2015 (the “**Leach Xpress Contract**”) the Debtor provides labor, materials, and services to Columbia Gas through itself and through its subcontractors and vendors on the Leach Xpress Project;

WHEREAS pursuant to its contract with Columbia Gas dated November 3, 2017 (the “**Mountaineer Xpress Contract**”) the Debtor provides labor, materials, and services to

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 pre-petition 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 \$35,972,612.40 into the MXP Account and \$4,474,438.91 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.

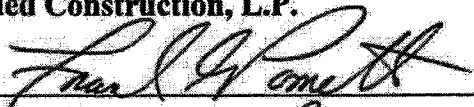
31. The Parties agree that this Stipulation was negotiated and drafted jointly by the Parties and that no inferences or presumptions regarding the interpretation of this Stipulation shall be drawn or made by or against any Party as the author of this Order and Stipulation.

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: FRANK A. POMETTI
Date: 10/22/18

Columbia Gas Transmission, LLC

By: _____
Print: _____
Date: _____

By: _____
Print: _____
Date: _____

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: **Richard Prior**

Date: **Vice President**

By:  _____

Print: **James R. Eckert**

Date: **Sr. Vice President**

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