

**\*\*THIS IS NOT A SOLICITATION OF VOTES ON THE PLAN. VOTES MAY NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED A DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL, BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES, AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.\*\***

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

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
WELDED CONSTRUCTION, L.P., *et al.*,<sup>1</sup>) Case No. 18-12378 (CSS)  
)  
) (Jointly Administered)  
Debtors. )  
\_\_\_\_\_)

**AMENDED DISCLOSURE STATEMENT FOR THE  
AMENDED CHAPTER 11 PLAN OF WELDED CONSTRUCTION, L.P. AND  
WELDED CONSTRUCTION MICHIGAN, LLC**

YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach (No. 4070) (sbeach@ycst.com)  
Matthew B. Lunn (No. 4119) (mlunn@ycst.com)  
Robert F. Poppiti, Jr. (No. 5052) (rpoppiti@ycst.com)  
Allison S. Mielke (No. 5934) (amielke@ycst.com)  
Betsy L. Feldman (No. 6410) (bfeldman@ycst.com)  
1000 North King Street  
Wilmington, DE 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

*Counsel to the Debtors*

Dated: April 27, 2020

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552-0470.



**DISCLAIMER**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE AMENDED CHAPTER 11 PLAN OF WELDED CONSTRUCTION, L.P. AND WELDED CONSTRUCTION MICHIGAN, LLC THAT THE DEBTORS ARE SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT, WITH THE SUPPORT OF THE COMMITTEE (DEFINED BELOW) AND FEDERAL INSURANCE COMPANY. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN, AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN (INCLUDING THE COMPROMISES AND SETTLEMENTS PROVIDED FOR IN THE PLAN), CERTAIN STATUTORY PROVISIONS AND CERTAIN DOCUMENTS RELATING TO THE PLAN. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, THE PLAN, SUCH STATUTES, OR SUCH DOCUMENTS. TO THE EXTENT THERE IS ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN, AND THE RESPECTIVE EXHIBITS ATTACHED THERETO, IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN AND MAKING ANY ELECTIONS IN CONNECTION WITH THE PLAN WITH RESPECT TO CONVENIENCE CLAIMS AND RELEASES UNDER SECTION 11.11(b) OF THE PLAN, AS APPLICABLE.**

**THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE DEBTORS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY ANY RECOVERIES UNDER THE PLAN, THE DEBTORS DO NOT PURPORT TO PREDICT WITH ACCURACY CHANGES IN PRESENT CIRCUMSTANCES AND UNDERTAKE NO OBLIGATION TO AMEND THIS DISCLOSURE STATEMENT TO REFLECT SUCH CIRCUMSTANCES.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL, STATE, LOCAL OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. PERSONS OR ENTITIES HOLDING OR TRADING IN, OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING, SECURITIES OR CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.**

**THE DEBTORS MAKE STATEMENTS IN THIS DISCLOSURE STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER FEDERAL SECURITIES LAWS. STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES, REPRESENT THE DEBTORS’ ESTIMATES AND ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE MADE, AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER KNOWN AND UNKNOWN FACTORS THAT COULD IMPACT THE DEBTORS’ PLAN OR DISTRIBUTIONS THEREUNDER. IN ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,” “EXPECTS,” “INTENDS,” “ESTIMATES,” “ANTICIPATES,” “PLANS” OR SIMILAR TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS AND OTHER INTERESTED PARTIES SHOULD ALSO REVIEW THE SECTION OF THIS DISCLOSURE STATEMENT ENTITLED “RISK FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.**

#### **VOTING DEADLINE**

**THE DEADLINE TO VOTE TO ACCEPT OR REJECT THE PLAN IS [●] (EASTERN TIME) ON [●], 2020. TO BE COUNTED, THE VOTING AGENT MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE IN THE FORM AND MANNER PROVIDED FOR IN THE DISCLOSURE STATEMENT ORDER (DEFINED BELOW) AND THE VOTING INSTRUCTIONS AND DESCRIBED HEREIN.**

#### **CONFIRMATION HEARING AND DEADLINE TO OBJECT TO THE PLAN**

**THE HEARING TO CONSIDER CONFIRMATION OF THE PLAN HAS BEEN SCHEDULED FOR [●], 2020 AT [●] (EASTERN TIME). OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED (I) ON OR BEFORE [●], 2020 AT [●] (EASTERN TIME), AND (II) IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER (DEFINED BELOW) AND THE CONFIRMATION HEARING NOTICE.**

**\*\*\*THE DEBTORS, THE COMMITTEE AND FEDERAL INSURANCE COMPANY BELIEVE THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR ESTATES AND INTERESTED PARTIES. FOR THESE REASONS, THE DEBTORS, THE COMMITTEE AND FEDERAL INSURANCE URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN.\*\*\***

**TABLE OF CONTENTS**

		<b>Page(s)</b>
I.	INTRODUCTION .....	1
	A. Overview of the Chapter 11 Cases and the Plan.....	1
	B. Plan Voting Instructions and Procedures .....	8
II.	GENERAL HISTORICAL INFORMATION ABOUT THE DEBTORS .....	12
	A. Corporate Structure.....	12
	B. Business Overview.....	12
	C. Prepetition Capital Structure.....	14
III.	THE CHAPTER 11 CASES .....	17
	A. First Day Orders.....	17
	B. Debtor-in-Possession Financing .....	17
	C. Customer Project Completion Agreements .....	18
	D. Litigation.....	22
	E. Sale; Miscellaneous Asset Sale Transactions .....	26
	F. Executory Contracts and Unexpired Leases .....	27
	G. Additional Orders.....	28
	H. Key Employee Incentive Plans, Key Employee Retention Plans .....	29
	I. Appointment of Committee .....	30
	J. Claims Process and Bar Dates .....	30
IV.	SUMMARY OF THE CHAPTER 11 PLAN .....	32
	A. Purpose and Effect of the Plan.....	32
	B. Substantive Consolidation .....	32
	C. Plan Administrator .....	33
	D. Estimated Recoveries for Holders of Surety Bond Claims, General Unsecured Claims and Convenience Class Claims .....	37
	E. Treatment of Unclassified Claims .....	38
	F. Classification and Treatment of Claims and Interests .....	39
	G. Acceptance or Rejection of the Plan.....	43
	H. Implementation of the Plan.....	44
	I. Executory Contracts and Unexpired Leases .....	46
	J. Provisions Governing Distributions.....	47

- K. Procedures for Resolving Disputed, Contingent and Unliquidated Claims and Distributions with Respect Thereto.....50
- L. Conditions Precedent to the Occurrence of the Effective Date .....52
- M. Retention of Jurisdiction.....53
- N. Miscellaneous Plan Provisions .....55
- O. The Plan Settlement .....62
- V. RISK FACTORS .....63
  - A. Risk of Amendment, Waiver, Modification or Withdrawal of the Plan.....63
  - B. Parties May Object to the Plan’s Classification of Claims and Interests.....63
  - C. The Debtors May Not Be Able to Obtain Confirmation of the Plan .....63
  - D. The Conditions Precedent to the Effective Date of the Plan May Not Occur.....63
  - E. General Unsecured Creditors May Recover Less Than Projected.....63
  - F. The Allowed Amount of Claims May Differ from Current Estimates .....64
  - G. Risks Related to Income Taxation .....64
  - H. Litigation.....64
- VI. CONFIRMATION OF THE PLAN.....64
  - A. The Confirmation Hearing .....64
  - B. Requirements for Confirmation of the Plan.....65
  - C. Best Interests of Creditors.....66
  - D. Feasibility.....67
  - E. Acceptance by Impaired Classes .....67
  - F. Confirmation Without Acceptance by All Impaired Classes.....67
  - G. Alternatives to Confirmation and Consummation of the Plan.....68
- VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN .....69
  - A. Certain Tax Consequences to Holders of Claims .....70
  - B. Certain Tax Consequences to the Debtors .....72
  - C. Certain Tax Consequences to Equity Owners .....73
  - D. Importance of Obtaining Professional Tax Assistance.....74
- VIII. RECOMMENDATION .....75

**EXHIBITS**

- EXHIBIT A Chapter 11 Plan
- EXHIBIT B Organizational Chart
- EXHIBIT C Liquidation Analysis

**\*\*\*THE DEBTORS ADOPT AND INCORPORATE THE EXHIBITS ATTACHED HERETO  
BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN\*\*\***

## **I. INTRODUCTION**

Welded Construction, L.P. (the “**Partnership**”) and Welded Construction Michigan, LLC (the “**Subsidiary**,” and together with the Partnership, the “**Debtors**”), the debtors and debtors-in-possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this disclosure statement (the “**Disclosure Statement**”), pursuant to sections 1125 and 1126(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), in connection with the solicitation of votes on the *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC*, dated April 27, 2020 (as amended, supplemented and modified from time to time, the “**Plan**”). A copy of the Plan is attached hereto as **Exhibit A**.<sup>2</sup>

The purpose of this Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan and who are entitled to vote on the Plan to make an informed decision in exercising their right to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding, among other things, the Debtors’ prepetition operating and financial history, their reasons for seeking protection under chapter 11 of the Bankruptcy Code, the course of these Chapter 11 Cases, and the orderly disposition of the Debtors’ Assets. This Disclosure Statement also describes, among other things, certain terms and provisions of the Plan (including the compromises and settlements provided for in the Plan), factors supporting approval of the Plan Settlement and Indemnity Agreement, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses, among other things, the Confirmation process and the voting and election procedures that Holders of Claims entitled to vote under the Plan must follow for their votes on the Plan to be counted and their elections with respect to Convenience Claims and releases under Section 11.11(b) of the Plan, as applicable, to be effective.

### **THE DEBTORS SUPPORT THE PLAN AND URGE ALL HOLDERS CLAIMS ENTITLED TO VOTE TO VOTE TO ACCEPT THE PLAN.**

#### **A. Overview of the Chapter 11 Cases and the Plan**

##### **1. The Chapter 11 Cases**

For decades, the Debtors’ business was a fundamentally strong one, providing significant value to their customers’ construction projects. In the months before the Petition Date, as most of the Projects (defined below) neared completion, the Debtors began facing a series of challenges on the Projects and from their active Customers (defined in Section II(B) below) that combined to impair the Debtors’ operating cash flow and the Debtors’ near-term liquidity. These challenges began with significant Customer permitting delays at the outset of certain Projects and, in the months prior to the chapter 11 filing, included: (a) inclement weather, regulatory delays, shutdowns and other delays that in many instances were not specific to the Debtors; (b) cost overruns on Projects primarily resulting from the foregoing inclement weather and other Project delays; and (c)

<sup>2</sup> Unless otherwise noted, all capitalized terms used but not defined herein shall have the meanings provided to them in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.



significant unprecedented payment delays or disputes with Customers that largely began as the Projects neared completion and Customers could place the pipelines in-service to generate profit.

Of particular note, on October 4, 2018, Transco unexpectedly withheld \$23,563,538 from a payment to the Debtors for the Williams/ASR Project (each, defined below), and filed a lawsuit (the “**Prepetition Transco Complaint**”) against the Debtors that same day, in the District Court of Tulsa County for the State of Oklahoma, styled *Transcontinental Gas Pipe Line Company, LLC v. Welded Construction, L.P.*, asserting breach of contract. The Debtors vigorously dispute the allegations contained in the Prepetition Transco Complaint.

The Debtors continued to engage with Transco and their other Customers in an attempt to resolve the disputes and avert the need for the filing of these Chapter 11 Cases. However, the filing of the Prepetition Transco Complaint was quickly made public to the market, creating confusion and concern among the other Customers, employees, subcontractors and vendors.

As a bankruptcy filing became a potential outcome, it was imperative for the Debtors and their Customers to set aside their disputes temporarily to achieve their common goals of completing the Projects and paying the Debtors’ employees, subcontractors and vendors. To that end, in the days leading up to the Petition Date, the Debtors engaged with their Customers to explore mutually beneficial options and ultimately entered into the Customer Project Completion Agreements to ensure not only success during a looming chapter 11 case, but also a value-maximizing exit strategy from bankruptcy. Importantly, this approach allowed the Debtors to preserve certain claims against the Customers for a later date as they completed Project work and mitigated, to the extent possible, the claims of employees, subcontractors and vendors. The objectives of the Customer Project Completion Agreements were generally as follows:

First, the Debtors and their advisors negotiated with their Customers to establish mutually agreeable terms on which the Customers would pay for the Debtors to complete unfinished Project work, until such pipelines could be placed into service. In general, the Customers agreed to fund future expenses, payroll and union benefits and dues for the Debtors’ subcontractors, vendors and employees.

Second, funds were provided by the Customers to pay the Debtors’ employees, subcontractors and vendors for unpaid goods and services that, in a chapter 11 case, would likely become general unsecured claims against the Debtors. Without such funds and the promise of payment, these constituents likely would not have agreed to continue working on the Projects until completion and Customers would be required to address significant lien issues on their Projects.

Third, the Debtors secured debtor-in-possession financing to fund their Chapter 11 Cases. While the Debtors and their advisors engaged in a marketing effort to procure such funding, North American Pipeline Equipment Company, LLC (“NAPEC”), an entity that is under common ownership with the partners of the Partnership, Ohio Welded Company, LLC and McCaig Welded GP, LLC, offered the best terms for a \$20 million debtor-in-possession financing facility primarily secured by the Debtors’ owned equipment. The DIP Facility (defined below) was critical to permit the Debtors to pay for administrative expenses and other costs associated with the Chapter 11 Cases, while executing on their plans with Customers, completing the Projects, and satisfying significant employee, union, subcontractor and vendor claims.

Altogether, this strategy proved greatly successful. The Debtors completed the Projects and the Customers are reaping the profits from the pipelines. The DIP Facility (defined below) has been repaid. Over \$181 million<sup>3</sup> in prepetition employee, union, subcontractor and vendor claims and over \$56 million in administrative expense claims have been paid even before a chapter 11 plan is confirmed. At the same time, the Debtors negotiated consensual settlements with their Customers, namely Consumers and Sunoco (each defined below), resulting in payment of the claims of all employees, subcontractors and vendors that worked on their Projects and the return of approximately \$18 million to the Debtors' Estates for the benefit of other stakeholders. These efforts included significant, expedited claims reconciliation efforts and resulted in hundreds of settlements with subcontractors and vendors. With these hurdles largely behind them, the Debtors, in a close and cooperative effort with the Committee, were able to focus on other asset maximization efforts, such as (i) the assignment of a go-forward construction contract, which netted approximately \$2.5 million, (ii) a thorough marketing and sale process of its construction equipment, which netted approximately \$30.4 million, (iii) sale of the Debtors' corporate headquarters in the amount of \$2.7 million, and (iv) the settlement of the Prime NDT litigation for \$6.2 million. The remaining issues with other Customers and parties that were preserved at the outset of these Chapter 11 Cases, such as litigation with Williams and Transco, will continue to be vigorously pursued to ensure a value-maximizing result for the Debtors' remaining stakeholders. The Plan is the best means to accomplish that ultimate goal.

## 2. Plan Settlement

During the Chapter 11 Cases, the Committee undertook an extensive investigation of the prepetition conduct of the Debtors and their affiliates and certain third parties affiliated with the Debtors.<sup>4</sup> In connection with the investigation, the Committee took informal discovery from the Debtors and the Partner Settlement Parties. The Committee requested and received several thousand pages of documents and diligence materials in furtherance of its investigation. The Debtors, in addition to responding the Committee's requests, conducted their own investigation of potential claims and causes of actions. Ultimately, these investigations revealed certain transactions and events in the Debtors' recent corporate history that may give rise to potential claims or causes of action (collectively, the "**Potential Claims**").

The Plan Settlement Parties engaged in extensive, good-faith and arms'-length negotiations with respect to the Potential Claims, which resulted in a global compromise (as defined in the Plan, the "**Plan Settlement**") that not only resolves the Potential Claims, but also paves the way for the resolution of these Chapter 11 Cases and confirmation of the Plan with support from the Partners and the Committee.

---

<sup>3</sup> This amount includes claims satisfied pursuant to the Federal Insurance Company Surety Bond (defined below).

<sup>4</sup> In addition to the Debtors, the Committee's investigation covered Bechtel GP, Bechtel LP, Bechtel Corporation, Bechtel Global Corporation, Bechtel Oil, Gas and Chemicals, Inc., Bechtel Equipment Operation Inc., Bechtel Power Corporation, McCaig GP, and McCaig LP and each of their respective non-Debtor Related Parties. (collectively, the "**Partner Settlement Parties**").

The Plan Settlement is described more fully in Article XII of the Plan and Section IV.O herein, and the Plan Settlement Agreement is attached as Exhibit A to the Plan. In general, the Plan Settlement Parties have agreed to the Plan Settlement on the following terms:<sup>5</sup>

- (i) any and all disputes between the Debtors, the Committee and the Partner Settlement Parties will be resolved;
- (ii) the Partner Settlement Parties will make the Plan Settlement Payment (as defined in the Plan) of \$2,000,000, and waive any and all claims against the Debtors and the Estates;
- (iii) Bechtel Global Corporation has agreed to enter into that certain Indemnity Agreement with Welded Construction, L.P., in the form set forth as Exhibit A to the Plan Settlement Agreement, pursuant to which, among other things, the Debtors have agreed that their liability with respect to that certain proof of claim number 534 (as it may be amended, the “**Withdrawal Liability Claim**”) filed by the Central States, Southeast and Southwest Areas Pension Fund (the “**Central States**”) in the Chapter 11 Cases shall be determined in the arbitration against Central States demanded by Bechtel on January 8, 2020, by the filing of an arbitration demand with the American Arbitration Association, and Bechtel Global Corporation has agreed to indemnify the Debtors against the Withdrawal Liability Claim;
- (iv) the Plan Settlement Parties agree that any residual proceeds of the letter of credit posted for the benefit of Zurich American Insurance Company and its affiliates by Welded Construction, L.P., but paid for by Bechtel Corporation and/or its affiliates (the “**Residual LOC Proceeds**”), are not property of the Estates and shall not be deemed Assets that vest in the Post-Effective Date Debtors but shall be the sole and exclusive property of Bechtel Corporation and/or its affiliates. Any Residual LOC Proceeds that are refunded to the Debtors or the Post-Effective Date Debtors shall be forwarded to Bechtel Global Corporation or its applicable affiliate by the Plan Administrator within three (3) Business Days after receipt of such Residual LOC Proceeds;
- (v) the Debtors and their Estates, with the consent of the Committee to be bound, release, waive and forever discharge the Partner Settlement Party Releasees and the Plan Settlement Parties agree to certain other release provisions in the Plan; and
- (vi) the Committee has agreed to support the Plan.

The Plan Settlement provides significant value to the Debtors and their Estates, favorably resolves and avoids potential protracted expensive and uncertain litigation, and enables the prompt and efficient wind-down of the Debtors’ Estates through the Plan. The Plan shall serve as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of each of the compromises and settlements

---

<sup>5</sup> To the extent that there is any inconsistency between this summary of the primary terms of the Plan Settlement and the description of the Plan Settlement in the Plan, the Plan controls.

provided for in the Plan Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Holders of Claims and Interests and other parties in interest, and are fair, equitable, and reasonable.

### **3. General Structure of the Plan**

The Plan provides for the disposition of the Debtors' Assets and the distribution of the proceeds in accordance with the requirements of the Bankruptcy Code. As of the date of this Disclosure Statement, the Debtors' Assets are largely Cash and the Retained Causes of Action.

Under the Plan, for purposes of voting and distribution in connection with the Plan, the Debtors will be substantively consolidated, meaning that all of the Assets and liabilities of the Debtors will be deemed to be the Assets and liabilities of the Partnership. As a result, the votes to accept or reject the Plan by Holders of Claims against a particular Debtor will be tabulated as votes to accept or reject the Plan for the substantively consolidated Debtors.

The Plan provides for the appointment of a Plan Administrator. The Plan Administrator shall be empowered to, among other things, administer and liquidate all Assets, object to and settle Claims and prosecute Retained Causes of Action in accordance with the Plan. The Plan also provides for Distributions to Holders of Allowed Claims, including Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, Priority Claims, Surety Bond Claims, General Unsecured Claims and Convenience Claims. In addition, the Plan cancels all Interests in the Debtors, and provides for the dissolution and wind-up of the affairs of the Debtors.

Finally, the Plan provides for and implements the Plan Settlement by and between the Plan Settlement Parties, pursuant to which, among other things, any and all disputes among the Debtors, the Committee and the Partner Settlement Parties are resolved.

### **4. Material Terms of the Plan**

The following is an overview of certain material terms of the Plan:

- All Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Claims and Allowed Priority Claims will be paid or otherwise satisfied in full as required by the Bankruptcy Code and provided for in the Plan, unless otherwise agreed to by the Holders of such Claims and the Plan Administrator.
- Holders of Allowed Surety Bond Claims will receive the Surety Bond Share and their Pro Rata share of the General Unsecured Claim Distribution, unless less favorable treatment is otherwise agreed to by the Plan Administrator and the Holders of such Claims.
- Holders of Allowed General Unsecured Claims will receive their Pro Rata share of the General Unsecured Claim Distribution, unless less favorable treatment is otherwise agreed to by the Plan Administrator and the Holders of such Claims.
- Holders of Allowed Convenience Claims will receive Cash equal to 50% of the amount of such Allowed Convenience Claims.

- Any Claim Filed or to be Filed against either Debtor, as to which each of the Debtors is co-liable as a legal or contractual matter, shall be deemed Filed as a single Claim against, and a single obligation of, the Debtors.
- Holders of Subordinated Claims will not be entitled to any distribution or recovery on account of such Claims.
- As of the Effective Date, all Interests of any kind will be cancelled, and the Holders thereof will not receive or retain any property, interest in property or consideration under the Plan on account of such Interests.
- The Plan Settlement Agreement will resolve any and all disputes among the Debtors, the Committee and the Partner Settlement Parties.
- The Plan serves as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Holders of Claims and other parties in interest, and are fair, equitable and reasonable.

#### **5. Summary of Treatment of Claims and Interests Under the Plan**

The table below summarizes the classification and treatment of Claims and Interests under the Plan.

**IN CONNECTION WITH CONSIDERING THE PROJECTED RECOVERIES FOR ALLOWED SURETY BOND CLAIMS AND ALLOWED GENERAL UNSECURED CLAIMS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE TABLE BELOW, PLEASE CONSIDER THE FOLLOWING:**

- **RECOVERIES ARE ESTIMATES ONLY, AND ACTUAL RECOVERIES MAY MATERIALLY DIFFER.**

- **RECOVERY ESTIMATES ARE BASED PRIMARILY ON THE DEBTORS' ESTIMATED DISTRIBUTIONS OF CASH AND DEPEND ON THE ALLOWANCE OR DISALLOWANCE OF CERTAIN CLAIMS ASSERTED AGAINST THE DEBTORS. RECOVERIES ON RETAINED CAUSES OF ACTION ARE NOT INCLUDED IN THESE RECOVERY ESTIMATES, BUT COULD MATERIALLY CHANGE THE ACTUAL RECOVERIES TO HOLDERS OF SURETY BOND CLAIMS AND GENERAL UNSECURED CLAIMS. SEE *INFRA* SECTION IV.D FOR A MORE DETAILED DESCRIPTION OF THE ESTIMATED RECOVERIES.**

**FOR A COMPLETE DESCRIPTION OF THE DEBTORS' CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN AND THE OTHER SECTIONS OF THIS DISCLOSURE STATEMENT.**

<u>Class</u>	<u>Claim or Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
1	Allowed Secured Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$0.0 million	100%
2	Allowed Priority Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$0.2 million	100%
3	Allowed Surety Bond Claims	Impaired <i>Entitled to Vote on Plan</i>	\$76.1 million	21% <sup>6</sup>
4	Allowed General Unsecured Claims	Impaired <i>Entitled to Vote on Plan</i>	\$20.7 million	21% <sup>7</sup>
5	Allowed Convenience Claims	Impaired <i>Entitled to Vote on Plan</i>	\$5.0 million	50%; up to a maximum of \$50,000
6	Subordinated Claims	Impaired <i>Deemed to Reject Plan</i>	N/A	N/A
7	Interests	Impaired <i>Deemed to Reject Plan</i>	N/A	N/A

**\*\*\*THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF ALLOWED CLAIMS, AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.\*\*\***

<sup>6</sup> As discussed in this Disclosure Statement, the Surety Bond Share of the Williams Litigation recovery is higher than the Estates' Share of such Williams Litigation Proceeds. Any recovery of Williams Litigation Proceeds will increase the Surety Bond Claims' recovery and reduce the amount of Surety Bond Claims that can share in the General Unsecured Claim Distribution. As such, the General Unsecured Claim Distribution will also increase based on lower claim amounts and increased Cash available for distribution based on the Estates' Share of the Williams Litigation Proceeds. *See infra* Section III.D.3.

<sup>7</sup> As discussed in this Disclosure Statement, the Surety Bond Share of the Williams Litigation recovery is higher than the Estates' Share of such Williams Litigation Proceeds. Any recovery of Williams Litigation Proceeds will increase the Surety Bond Claims' recovery and reduce the amount of Surety Bond Claims that can share in the General Unsecured Claim Distribution. As such, the General Unsecured Claim Distribution will also increase based on lower claim amounts and increased Cash available for Distribution based on the Estates' Share of the Williams Litigation Proceeds. *See infra* Section III.D.3.

## B. Plan Voting Instructions and Procedures

### 1. Voting Rights

Under the Bankruptcy Code, only classes of claims or interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan under section 1126 of the Bankruptcy Code are entitled to vote to accept or reject such plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan, and is conclusively presumed to have accepted such plan. As set forth in section 1124 of the Bankruptcy Code, a class is “impaired” if the legal, equitable or contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of claims or interests within an impaired class are entitled to vote to accept or reject a plan if such claims or interests are “allowed” under section 502 of the Bankruptcy Code.

Under the Bankruptcy Code, acceptance of a plan by a class of claims is determined by calculating the number and the amount of allowed claims voting to accept such plan. Acceptance by a class of claims requires more than one-half of the number of total allowed claims voting in the class to vote in favor of the plan, and at least two-thirds in dollar amount of the total allowed claims voting in the class to vote in favor of the plan; only those holders that actually vote to accept or reject the plan are counted for purposes of determining whether these dollar and number thresholds are met.

*Pursuant to the Plan, Claims in Classes 3, 4 and 5 are Impaired by, and entitled to receive a Distribution under, the Plan, and only the Holders of Claims in those Classes are entitled to vote to accept or reject the Plan. Only Holders of Claims in Classes 3, 4 and 5 as of [●], 2020 (the “Voting Record Date”) may vote to accept or reject the Plan.*

*Pursuant to the Plan, Claims in Classes 1 and 2 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan, and, therefore, are not entitled to vote on the Plan.*

*Pursuant to the Plan, Claims and Interests in Classes 6 and 7, respectively, will not receive or retain any property under the Plan on account of such Claims or Interests, as applicable, and, therefore, are deemed to reject the Plan and not entitled to vote on the Plan.*

### 2. Solicitation Materials

The Debtors, with the approval of the Bankruptcy Court, have engaged Kurtzman Carson Consultants LLC (the “**Voting Agent**”) to serve as the voting agent to process and tabulate Ballots and to oversee the Plan voting process generally. The following materials constitute the solicitation package (the “**Solicitation Package**”):

- This Disclosure Statement, including the Plan and any other exhibits annexed thereto;
- The Bankruptcy Court order approving this Disclosure Statement [D.I. ●] (the “**Disclosure Statement Order**”) (excluding exhibits);
- The applicable Ballot and voting instructions to be used in connection with voting to accept or to reject the Plan and to make certain elections with respect to Convenience Claims and releases under Section 11.11(b) of the Plan, as applicable (the “**Voting Instructions**”);

- A pre-addressed, postage pre-paid return envelope; and
- The notice of, among other things, (a) the date, time and place of the hearing to consider Confirmation of the Plan and related matters, and (b) the deadline for filing objections to Confirmation of the Plan (the “**Confirmation Hearing Notice**”).

The Debtors, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Disclosure Statement, the Disclosure Statement Order, the Confirmation Hearing Notice and the Plan will also be available at the Voting Agent’s website for the Debtors’ Chapter 11 Cases at <https://www.kccllc.net/welded>, by clicking on the tab on the left-hand side of the page titled “Plan and Disclosure Statement.”

If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Solicitation Package, or if you have any questions concerning voting procedures, you should contact the Voting Agent electronically by submitting an inquiry via <http://www.kccllc.net/welded> or in writing to Welded Construction, L.P., *et al.*, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245.

**If your Claim is subject to a pending claim objection as of [●], 2020, and you wish to vote on the Plan in the amount and priority as reflected on your timely filed proof of claim, you must File a motion, in accordance with the Disclosure Statement Order, pursuant to Bankruptcy Rule 3018(a) with the Bankruptcy Court for the temporary allowance of your Claim for Plan voting purposes, and your Claim or portion thereof, as applicable, must be temporarily allowed by the Bankruptcy Court for voting purposes by the Voting Deadline, or you will not be entitled to vote to accept or reject the Plan.**

**THE DEBTORS, THEIR ESTATES AND THE POST-EFFECTIVE DATE DEBTORS, AS APPLICABLE, RESERVE THE RIGHT TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR PLAN DISTRIBUTION PURPOSES OR OTHERWISE.**

### **3. Plan Voting Instructions and Procedures**

To ensure your vote on the Plan is counted and any Release Opt-Out is effective you must: (a) complete the Ballot in accordance with the instructions set forth therein; (b) indicate your decision either to accept or reject the Plan in the boxes indicated in the Ballot; (c) make a Release Opt-Out election, if applicable and desired; and (d) sign and return the Ballot to the address set forth on the Ballot so as to be received by the Voting Agent prior to the Voting Deadline (defined below). ABSENT PRIOR CONSENT OF THE DEBTORS, BALLOTS SENT BY FACSIMILE OR ELECTRONIC TRANSMISSION ARE NOT ALLOWED AND WILL NOT BE COUNTED.

The Bankruptcy Court has fixed [●], 2020 as the Voting Record Date for the determination of the Holders of Claims who are entitled to (a) receive a Solicitation Package and (b) vote to accept or reject the Plan.

After carefully reviewing the Plan, this Disclosure Statement and the detailed Voting Instructions, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan in accordance with the Voting Instructions.



**The deadline to vote on the Plan is [●], 2020 at 4:00 p.m. (Eastern Time) (the “Voting Deadline”). For your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions, and received by the Voting Agent no later than the Voting Deadline.**

**Only the Holders of Claims in Classes 3, 4 and 5 as of the Voting Record Date are entitled to vote to accept or reject the Plan.** Each Holder of a Claim must vote its entire Claim either to accept or reject the Plan and may not split such vote. It is important to follow the specific Voting Instructions.

Unless otherwise provided in the Voting Instructions or the Disclosure Statement Order, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection, of the Plan;
- Any Ballot received after the Voting Deadline, except by order of the Bankruptcy Court or if the Debtors have granted an extension of the Voting Deadline with respect to such Ballot;
- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- Any Ballot cast by an Entity that does not hold a Claim in the Voting Class;
- Any unsigned Ballot or Ballot without an original signature; and
- Any Ballot submitted by fax, email or electronic transmission, unless approved by the Debtors in writing or otherwise ordered by the Bankruptcy Court.

**The Ballots permit Holders of Class 4 General Unsecured Claims the opportunity to have their General Unsecured Claim treated as a Class 5 Convenience Class Claim.**

**The Ballots permit Holders of Class 4 General Unsecured Claims and Class 5 Convenience Claims that vote to accept or reject the Plan the opportunity to opt out of the releases set forth in Section 11.11(b) of the Plan by checking the appropriate box on their Ballots to elect the Release Opt-Out.**

**Except as otherwise provided for in the Plan, (a) all Holders of Claims deemed hereunder to have accepted the Plan (i.e., Holders of Claims in Unimpaired Classes of Claims) that have not Filed an objection to the release in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan; and (b) all Holders of Claims in Classes 4 and 5 that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out indicating such Holder’s decision to not participate in the releases set forth in Section 11.11(b) of the Plan, or (ii) do not vote to accept or reject the Plan, and either do not timely submit a Release**

**Opt-Out, or do not File an objection to the releases in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan, are deemed to have forever released the Released Parties from any and all claims and causes of action to the extent provided for in Section 11.11(b) of the Plan.**

Except as otherwise provided in the Disclosure Statement Order: any party who has previously delivered a valid Ballot for the acceptance or rejection of the Plan may revoke such Ballot and change its vote by delivering to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan; and any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. In the case where multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. To be valid, a notice of withdrawal must (a) contain the description of the Claims to which it relates and the aggregate principal amount represented by such Claims; (b) be signed by the withdrawing party in the same manner as the Ballot being withdrawn; (c) contain a certification that the withdrawing party owns the Claims and possesses the right to withdraw the vote sought to be withdrawn; and (d) be actually received by the Voting Agent prior to the Voting Deadline. The Debtors' right to contest the validity of any such withdrawals of Ballots is expressly reserved.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim; (b) the Solicitation Package that you have received; or (c) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents Filed in these Chapter 11 Cases may be obtained free of charge at the Voting Agent's website at <https://www.kccllc.net/weldded>. Documents Filed in these Chapter 11 Cases may also be examined between the hours of 8:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

The Voting Agent will process and tabulate Ballots received by the Voting Agent for the Classes entitled to vote to accept or reject the Plan, and will File a voting report in accordance with the Disclosure Statement Order.

**\*\*\*THE DEBTORS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN BY THE VOTING DEADLINE.\*\*\***

#### 4. Confirmation Hearing and Deadline for Objections to Confirmation

Objections to Confirmation of the Plan must be Filed and served on the Debtors and certain other entities, all in accordance with the Confirmation Hearing Notice, so that they are actually received by no later than **10/1, 2020 at 4:00 p.m. (Eastern Time)**. Unless objections to Confirmation of the Plan are timely Filed and served in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court. For further information, refer to Section VI of this Disclosure Statement, “Confirmation of the Plan.”

## II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTORS

Additional information regarding the Debtors’ businesses, their capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Frank Pometti in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* [D.I. 4] (the “**First Day Declaration**”).

### A. Corporate Structure

The Partnership, a Delaware limited partnership, is the sole member and owner of the Subsidiary, a Michigan limited liability company.

The Partnership has two general partners and two limited partners. The general partners are Ohio Welded Company LLC (owner of 15 partnership units) and McCaig Welded GP, LLC (owner of 5 partnership units). The limited partners are Bechtel Oil, Gas and Chemicals, Inc. (owner of 735 partnership units) and McCaig US Holdings, Inc. (245 partnership units). The Partnership is overseen by a five-member board of managers, and governed in accordance with that certain *Second Amended and Restated Limited Partnership Agreement of Welded Construction, L.P.* dated December 1, 2015. Pursuant to an order of the Bankruptcy Court [D.I. 236], Frank A. Pometti of AlixPartners, LLP is the Chief Restructuring Officer of each of the Debtors. Attached hereto as **Exhibit B** is a chart detailing the organizational structure of the Debtors as of the Petition Date.

### B. Business Overview

Prior to liquidating substantially all of their Assets in connection with their Chapter 11 Cases, the Debtors were a mainline pipeline construction contractor. As of the Petition Date, the Debtors had a workforce of 1,582 employees, of which 1,486 were union members. The Debtors’ origins trace back to the 1940s when Hank Mogg and Harold Fluharty (both pipeline welders) originally founded the Debtors’ business, utilizing the trade name “Mogg & Fluharty Pipe Line Welding Contractors.” The Debtors moved their headquarters to Perrysburg, Ohio in the mid-1970s, where it remained until November 2019.

Although the Debtors’ business originated in the Midwest, over the years, it grew to oversee projects nationwide, and became one of the largest and most relied upon mainline pipeline construction contractors in the United States. The Partnership came to oversee projects in lengths ranging from a few hundred feet to over 200 miles for various customers, including Consumers, Sunoco, Energy Transfer Partners, Columbia Gas, and Transco (each defined below). In addition to mainline pipeline construction, the Partnership provided certain related services including: (a) fabrication welding, foundation construction, instrumentation installation, painting, and fencing for

pipeline meter/regulator stations; (b) heavy wall pipe and fabrication welding for installation of compressor stations; (c) hydrostatic testing of existing pipelines; (d) pre-cleaning of pipelines to meet environmental discharge requirements; (e) investigation and repair of pipeline anomalies; and (f) replacement or repair of pipeline segments.

The Subsidiary was specifically formed to provide Consumers (defined below) with certain of those same services.

In November 2019, pursuant to an Order of the Bankruptcy Court, the Debtors sold their corporate headquarters located in Perrysburg, Ohio. Consequently, the Debtors do not currently own any real property.

The core of the Debtors' business consisted of mainline pipeline construction contract work with Customers that include many of the major energy providers in the United States. Such construction contracts were sometimes fixed-price contracts in which the contractor bids an amount for the project.<sup>8</sup> The price initially bid by contractors may later be subject to change orders if the cost of the project is greater than anticipated.<sup>9</sup> Certain of the Debtors' contracts with Customers, including their contract with Transco, were cost-plus contracts. In a cost-plus contract, the contractor's profit is fixed in an agreed amount, and the contractor's expenses are passed through to the project owner for reimbursement at actual cost.<sup>10</sup> Thus, a cost-plus contract structure is designed for the owner of the project to bear the risk that the cost of the project will be greater than anticipated as well as the attendant execution risks associated with completion of the project.<sup>11</sup>

In the ordinary course of their business, the Debtors would furnish and pay for all labor, supervision, technical capability, transportation, materials, supplies and all other items or accessories necessary for a particular project. Additionally, the Debtors would regularly purchase, lease and maintain equipment for work on their projects, and the Debtors were oftentimes co-signors with their customers on the state and federal permits that authorized the projects. Finally, for most of their projects, the Debtors employed and oversaw the work of subcontractors and vendors (collectively, the "**Sub-Contractors**"), and, under certain contracts, the customer had discretion over which Sub-Contractors to utilize.

---

<sup>8</sup> See *Key Considerations in a Fixed-Price Construction Contract*, MODERN CONTRACTOR SOLUTIONS (June 2018), <https://mcsmag.com/key-considerations-in-a-fixed-price-construction-contract/> ("[T]he most frequently utilized pricing mechanism [in construction contracting] is, by far, the fixed-price arrangement.") (last visited Oct. 2, 2019).

<sup>9</sup> *Info. Sys. & Networks Corp. v. United States*, 64 Fed. Cl. 599, 606 (2005) ("Unlike the cost-reimbursement type contract in which the [project owner] bears the burden of all allowable costs, the burden is shifted entirely to the contractor in a fixed-price contract . . .").

<sup>10</sup> *Contract*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "cost-plus contract" as "[a] contract in which payment is based on a fixed fee or a percentage added to the actual cost incurred; esp., a construction contract in which the owner pays to the builder the actual costs of material and labor plus a fixed percentage over that amount.").

<sup>11</sup> W. Henry Parkman, *Cost-Plus Contracting Without a GMP—Contractor's Risks, Owner's Rights?*, 29 NO. 11 CONSTR. LITIG. REP. 1 (Nov. 2008) ("The cost-plus contract gives the owner all of the risk . . . of unanticipated changes in material and labor costs, as well as all of the risk and benefit of the contractor's relative efficiency or inefficiency." (internal quotation marks omitted)).

As of the Petition Date, the Debtors were working on portions of five pipeline construction projects (collectively, the “**Projects**”) for their customers (collectively, the “**Customers**”), as follows:

- On September 19, 2018, the Debtors successfully achieved mechanical completion on a 96-mile expanse of the Atlantic Sunrise Pipeline (the “**Williams/ASR Project**”) for Transcontinental Gas Pipe Line Company, LLC (“**Transco**”), an affiliate of The Williams Companies, Inc. (“**Williams**”), which received Federal Energy Regulatory Commission (“**FERC**”) approval on October 4, 2018 and was placed into service on October 6, 2018. The Debtors completed restoration, cleanup and demobilization efforts on the Williams/ASR Project on or about December 8, 2019.
- The Debtors constructed a portion of the Saginaw Trail Pipeline (the “**2018 Consumers Project**”) for Consumers Energy Company (“**Consumers**”), and the pipeline went into service prior to the Petition Date. The Debtors completed restoration, cleanup and demobilization efforts on or about December 1, 2018. In addition, the Debtors contracted to build a portion of another pipeline for Consumers in 2019 (the “**2019 Consumers Project**”). However, as part of an agreement with Consumers (discussed further below), the Debtors, working closely with the Committee, assigned the contract for the 2019 Consumers Project to Snelson Companies, Inc. for \$2.5 million on or about February 7, 2019.
- The Debtors constructed a portion of the Mariner East Pipelines (the “**ETP Project**”) for Sunoco Partners Marketing & Terminals L.P. and Sunoco Pipeline L.P. (together, “**Sunoco**”), affiliates of Energy Transfer Partners, L.P. (collectively with Sunoco, “**ETP**”).
- The Debtors constructed portions of two pipelines for affiliates of TC Energy Corporation (f/k/a TransCanada Corporation) (“**Columbia Gas**”), 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 included work on the Leach XPress Pipeline in parts of West Virginia, Pennsylvania and Ohio (“**LXP**”) and the Mountaineer XPress Pipeline in West Virginia (“**MXP**”). The Debtors completed restoration, cleanup and demobilization efforts on LXP on or about November 2018 and on MXP on or about March 2019.

### C. Prepetition Capital Structure

As of the Petition Date, the Debtors had no outstanding secured debt obligations under any term loan or revolving credit facility or the like, but had certain existing or potential secured obligations in connection with discrete equipment financings (with liens in the applicable pieces of equipment) and potential miscellaneous statutory lien claims.

The Debtors’ capital structure as of the Petition Date is generally described below:

## 1. Unsecured Surety Bond Obligations

In the ordinary course of business, the Debtors were required to provide surety bonds (collectively, the “**Surety Bonds**”) to certain third parties, including contract counterparties, governmental units or other public agencies, to secure the Debtors’ payment or performance of certain obligations, including the completion of various projects within the terms of the applicable contracts, and environmental, road damage, lease, licensing and permitting and contractor obligations.

As of the Petition Date, the Debtors had four Surety Bonds related to their Projects. The Surety Bonds were issued through Federal Insurance Company and Berkshire Hathaway Specialty Insurance Company (“**Berkshire**,” and collectively with Federal Insurance Company, the “**Sureties**”).

Federal Insurance Company issued three Surety Bonds as follows: (a) an approximately \$454 million bond related to the Williams/ASR Project; (b) an approximately \$56 million bond related to a project that was completed by the Debtors approximately two years ago, which the Debtors believe has been released without liability; and (c) a \$14.5 million wage payment bond. Finally, Berkshire issued an approximately \$60 million bond on the 2018 Consumers Project.

In connection with the Surety Bonds, the Debtors entered into that certain: (a) *General Indemnity Agreement* dated February 28, 2017 with Federal Insurance Company (the “**Federal Insurance Company Indemnity Agreement**”); and (b) *General Agreement of Indemnity* dated May 29, 2018 with Berkshire (the “**Berkshire Indemnity Agreement**,” and collectively, the “**Indemnity Agreements**”). Pursuant to these Indemnity Agreements, the Debtors agreed to indemnify Federal Insurance Company and Berkshire, respectively, on the terms set forth therein.

On February 27, 2019, Federal Insurance Company asserted Claim 551 against the Debtors’ Estates pursuant to the Federal Insurance Company Surety Bonds and in connection with the Federal Insurance Company Indemnity Agreement (the “**Surety Bond Claim**”). The Surety Bond Claim consists of (i) an unliquidated General Unsecured Claim for not less than approximately \$524 million, representing the aggregate penal limit of the Federal Insurance Company Surety Bonds, (ii) an unliquidated 503(b)(9) Claim representing bond premiums and charges under the Federal Insurance Company Surety Bonds, *plus* interest, costs and attorneys’ fees and (iii) a liquidated General Unsecured Claim for almost \$26 million on account of payments made to subcontractors for the Williams/ASR Project up to February 19, 2019 by Federal Insurance Company to claimants under the Federal Insurance Company Surety Bonds. A majority of the Sub-Contractors that provided goods and services on the Williams/ASR Project have submitted claims against the Federal Insurance Company Surety Bond related to that project. To date, Federal Insurance Company has paid approximately \$74.4 million on account of the Federal Insurance Company Surety Bond.

Additionally, Berkshire asserted two Claims: one Claim for nearly \$4 million relating to the Berkshire Surety Bond, and another Claim for over \$30 thousand, relating to administrative expenses incurred in executing the Berkshire Surety Bond (together, the “**Berkshire Claims**”). On February 28, 2020, the Bankruptcy Court entered an order fully resolving and releasing the Berkshire Claims [D.I. 1239].

## 2. Secured Claims

Prior to the Petition Date, financing statements were filed against the Debtors asserting certain discrete security interests in miscellaneous equipment in connection with certain amounts that were owing to CFSC (defined below) (which had filed liens in over 100 pieces of equipment)<sup>12</sup> and VAR Resources, LLC on account of equipment financings.

Certain other third parties, including state and local taxing authorities, also may possess statutory liens in certain of the Debtors' property or proceeds from the various sales during the Chapter 11 Cases in accordance with applicable law.

Finally, the Debtors previously entered into a revolving credit facility with The Huntington National Bank, pursuant to a credit agreement dated as of June 28, 2017 (the "**Revolving Credit Facility**"). There are no outstanding borrowings under the Revolving Credit Facility, which was terminated in March 2018.

## 3. Unsecured Debt

The Debtors have estimated the amount of Allowed General Unsecured Claims and Allowed Convenience Claims against the Debtors based on the Debtors' Schedules and an analysis of Filed proofs of claim. As part of this analysis, the Debtors have, among other things: (a) eliminated duplicate and superseded proofs of claim; (b) adjusted the amounts on account of certain Claims against the Debtors, as to which each of the Debtors is co-liable as a legal or contractual matter, so that such Claims are deemed Filed as a single Claim against, and a single obligation of, the substantively consolidated Debtors; (c) discounted to \$0 the amounts of certain litigation claims against the Debtors, including, without limitation, where the recovery, if any, on such claims would be limited to insurance proceeds available from any insurer of the Debtors; and (d) eliminated various proofs of claim and scheduled amounts that have been satisfied by (i) the Debtors, (ii) Federal Insurance Company, in connection with the Federal Insurance Company Surety Bond for the Williams/ASR Project<sup>13</sup> or (iii) the Debtors' Customers pursuant to the Customer Project Completion Agreements (defined below), as discussed further below.

After accounting for the foregoing, the Debtors estimate that Allowed General Unsecured Claims total about \$20.7 million and Allowed Convenience Claims total about \$5.0 million. These Claims include, without limitation: (a) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of the Debtors' business; (b) Claims by equipment lessors for unpaid rent, rejection damages and other obligations under the Debtors' leases; and (c) certain litigation Claims other than Claims asserted against the Debtors by Transco and Central States against the Debtors or their Estates.

<sup>12</sup> As discussed *infra* in Section III.E., the Debtors executed a buy-out option for the leased CFSC equipment and ultimately included such equipment in the Sale (defined below). All liens were released pursuant to the Sale.

<sup>13</sup> In a number of instances, Creditors filed Claims against the Debtors and also submitted claims to Federal Insurance Company that Federal Insurance Company paid pursuant to the Federal Insurance Company Surety Bond for the Williams/ASR Project. To the extent there was any duplication, the Debtors have identified those Claims as having been satisfied and eliminated them for purposes of estimating the aggregate amount of Allowed General Unsecured and Allowed Convenience Class Claims since the amounts are now included in the Surety Bond Claim.

Except as otherwise set forth herein, without limitation, the estimated amount of Allowed General Unsecured Claims and Allowed Convenience Claims does not account for any additional Claims against the Debtors that have yet to be Filed as a result of the rejection of executory contracts and unexpired leases, including, without limitation, the rejection of any such contracts and leases pursuant to the Plan. The estimated amount of Allowed General Unsecured Claims and Allowed Convenience Claims does, however, take into account certain additional reductions or eliminations of Claims as part of the claims resolution process, and the anticipated disallowance or allowance of certain litigation Claims asserted by or against the Debtors, including claims asserted against the Debtors by Transco and Central States. Thus, the total amount of Allowed General Unsecured Claims and Allowed Convenience Claims may be materially more or less than the estimate set forth herein.

### **III. THE CHAPTER 11 CASES**

On October 22, 2018, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The Chapter 11 Cases are being jointly administered under the caption *In re Welded Construction, L.P., et al.*, Case No. 18-12378 (CSS). Upon commencement of the Chapter 11 Cases, the automatic stay imposed under the Bankruptcy Code, with limited exceptions, enjoined the commencement or continuation of all collection efforts by Creditors, the enforcement of liens against property of the Debtors, and the continuation of litigation against the Debtors.

In the early days of the Chapter 11 Cases, the automatic stay also afforded the Debtors the necessary breathing room to begin tackling, among others, the goals described above—namely, completing the Projects, arranging for payment to (among others) their employees, Sub-Contractors and vendors for both pre- and post-petition goods and services, and obtaining debtor-in-possession financing. To that end, the Debtors have sought a wide variety of relief from the Bankruptcy Court.

#### **A. First Day Orders**

On or about the Petition Date, the Debtors Filed certain “first day” motions and applications with the Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of these Chapter 11 Cases, and to facilitate the Debtors’ transition to debtor-in-possession status. The Bankruptcy Court held hearings on these first-day motions, and entered a series of customary orders in connection therewith.

#### **B. Debtor-in-Possession Financing**

As described above, securing debtor-in-possession funding was critical to the success of these Chapter 11 Cases. Prior to the commencement of these Chapter 11 Cases, the Debtors and their advisors evaluated the cash requirements for the business and chapter 11 filing and reached out to potential third-party sources of financing. Simultaneously, the Debtors began negotiating a potential debtor-in-possession financing facility with NAPEC. Only NAPEC agreed to provide the Debtors the necessary funding to support the company and prosecute these Chapter 11 Cases.

On or about the Petition Date, the Debtors Filed a motion [D.I. 17] (the “**DIP Motion**”) seeking Bankruptcy Court approval of the DIP Facility (defined below) on the terms set forth in that certain *Senior Secured, Super Priority Debtor in Possession Term Loan, Guaranty and Security*



*Agreement*, dated as of October 25, 2018 (the “**DIP Credit Agreement**”), by and among the Debtors and NAPEC. The DIP Credit Agreement provided for senior secured, superpriority, postpetition financing in an aggregate principal amount of up to \$20 million (the “**DIP Facility**”). The DIP Motion was granted on an interim [D.I. 44], and then on a final, basis [D.I. 291].

On or about April 18, 2019, the Debtors satisfied their obligations under the DIP Facility, and the DIP Facility has been terminated.

### C. Customer Project Completion Agreements

As discussed in the First Day Declaration and above, prior to the Petition Date, the Debtors diligently evaluated a range of strategic alternatives to address the near-term liquidity challenges that forced them to commence these Chapter 11 Cases. As a result of these efforts, the Debtors began negotiating agreements with their Customers to permit the Debtors to complete their ongoing Projects and maximize the value of their Estates for the benefit of their stakeholders.

Accordingly, on or about the Petition Date, the Debtors Filed a motion [D.I. 12 (under seal) and 13 (redacted)] (the “**Customer Programs Motion**”) seeking approval of two Customer Project Completion Agreements (as defined in the Customer Programs Motion), and authority to enter into further agreements on an expedited basis. Ultimately, pursuant to the Customer Programs Motion and other settlement agreements, the Debtors obtained Bankruptcy Court authority to enter into agreements with all of their Customers for Project funding, procedures for Project completion, and authority to pay certain related pre- and post-petition obligations, as applicable.

As discussed below, by satisfying their obligations under the Customer Project Completion Agreements, the Debtors funded the majority of the Project completion costs and have satisfied over \$107 million of prepetition claims in the aggregate, which will result in an increased recovery for their remaining creditors. The Debtors, working together with the Committee, ultimately settled all claims with Sunoco and Consumers, but preserved any potential claims against their other Customers.

#### 1. Columbia Gas Agreement<sup>14</sup>

On October 23, 2018, the Bankruptcy Court entered an order in connection with the Customer Programs Motion, approving, among other things, the *Stipulation of Welded Construction, L.P. and Columbia Gas Transmission, LCC* [sic] [D.I. 43] (the “**Columbia Gas Agreement**”).

Under the Columbia Gas Agreement, the parties agreed to a funding mechanism that required Columbia Gas to pay (i) the post-petition costs of completion of the Columbia Gas Projects (namely, LXP and MXP Projects), and (ii) certain labor and unpaid prepetition claims of certain Critical Vendors (as defined in the Columbia Gas Agreement). The Columbia Gas Agreement did not include releases.

---

<sup>14</sup> All capitalized terms used in this Section III.D.1 that are not defined herein or in the Plan shall have the meanings provided to them in the Columbia Gas Agreement. The summary of the Columbia Gas Agreement provided herein is qualified in its entirety by reference to the Columbia Gas Agreement. In the case of any inconsistency between the summary herein and the Columbia Gas Agreement, the Columbia Gas Agreement shall govern.

The Columbia Gas Projects were both completed post-petition and the pipelines are in-service and generating profits for Columbia Gas. As of the date hereof, approximately \$44 million of Critical Vendor claims, wages and union dues and benefits have been satisfied pursuant the terms of the Columbia Gas Agreement. The Debtors estimate that approximately \$3 million remains outstanding under the Columbia Gas Agreement and Columbia Gas has not yet agreed to pay such amounts.

The Debtors continue to work with Columbia Gas to resolve open issues, including under the Columbia Gas Agreement, related to lien claims filed against the Columbia Gas Projects, and potential additional claims related to the Columbia Gas Projects.

Most recently, on April 15, 2020, the Debtors filed the *Debtors' Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement Agreement by and between the Debtors, Ohio CAT, and the CGT Parties* [D.I. 1320], seeking approval of a settlement agreement by and between the Debtors, Ohio Machinery Company d/b/a Ohio CAT, and Columbia Gas Transmission, LLC and TransCanada USA Services Inc. that resolves various contested matters among the parties. The motion is scheduled to be heard at the hearing on May 6, 2020.

## 2. Transco Commitment Letters<sup>15</sup>

The Williams/ASR Project was substantially complete prior to the Petition Date, with the pipeline in service and generating approximately \$35 million per month for Transco. *See Complaint and Objection to Claims* [Adv. D.I. 1]. However, certain demobilization and restoration work remained. Despite weeks of contention over the events surrounding the Prepetition Transco Complaint, the Debtors and Transco agreed to temporarily set aside their dispute to bring the Williams/ASR Project to completion and pay employees, subcontractors and vendors for doing so. Thus, on October 23, 2018, October 29, 2018 and November 8, 2018, the Bankruptcy Court approved three incremental agreements between the Debtors and Transco with respect to the funding of the Williams/ASR Project [D.I. 45, 111 & 172] (collectively, the “**Commitment Letters**”).

Notably, Transco declined to pay outstanding invoiced amounts owed to the Debtors or to fund payments for prepetition goods and services provided for the Williams/ASR Project, thereby resulting in Federal Insurance Company paying for \$74.4 million of such claims and, in turn, Federal Insurance Company asserting one of the largest claims against the Debtors' Estates in these Chapter 11 Cases. As discussed *infra* in Section III.D.3, the Debtors are litigating the payment dispute over prepetition amounts due to Welded under the Transco contract.

Nevertheless, under the terms of the Commitment Letters, the Debtors agreed to complete demobilization and clean-up efforts on the Williams/ASR Project. In kind, Transco agreed to fund \$8,050,000 in the aggregate for Welded's internal costs and expenses of providing work, as well as

---

<sup>15</sup> All capitalized terms used in this Section III.D.2 that are not defined herein or in the Plan shall have the meanings provided to them in the Commitment Letters. The summary of the Commitment Letters provided herein is qualified in its entirety by reference to the Commitment Letters. In the case of any inconsistency between the summary herein and the Commitment Letters, the Commitment Letters shall govern.

for third-party Sub-Contractor, materialmen and supplier costs, on spreads 5, 6 and 7 of the Williams/ASR Project.

On April 26, 2019, Transco filed a claim form, assigned claim number 775, asserting an administrative claim in the amount of nearly \$2.4 million against the Partnership relating to the Commitment Letters (the “**Transco Administrative Claim**”). On May 3, 2019, the Partnership filed the Williams Complaint (as later defined), which disputes that any amounts are due under the Commitment Letters. On July 8, 2019, Transco filed a motion to compel alleging that it was entitled to a refund of nearly \$2.27 million in amounts funded under the Commitment Letters [D.I. 836], which amounts Transco agrees are subsumed in the Transco Administrative Claim. On November 13, 2019, Transco filed an answer and counterclaim to the Williams Complaint, including a counterclaim relating to the amounts sought through the Transco Administrative Claim. On December 18, 2019, the Partnership filed an answer to Transco’s counterclaim, disputing that any amounts were owed under the Commitment Letters. Accordingly, the Debtors and Transco agree that the Transco Administrative Claim will be determined through the Williams Litigation.

### 3. Consumers Agreement<sup>16</sup>

Consumers and the Debtors were under contract for the Debtors to complete the 2018 Consumers Project—the Saginaw Pipeline Project—and the 2019 Consumers Project. The 2018 Consumers Project was substantially complete, with the pipeline in service prior to the Petition Date, but there was certain restoration, demobilization, cleanup and other work that remained. The 2019 Consumers Project had not yet begun as of the Petition Date. Prior to the Petition Date, the Debtors had also been negotiating a Customer Project Completion Agreement with Consumers. Shortly after the Bankruptcy Court’s approval of the Customer Programs Motion, the Debtors sought authority to enter into the *Customer Project Completion Agreement with Consumers Energy Company* dated November 8, 2018 (the “**Consumers Agreement**”). By order entered on November 9, 2018 [D.I. 181], the Bankruptcy Court approved the Consumers Agreement.

Under the Consumers Agreement, Consumers agreed to pay all amounts due under the Debtors’ contract with Consumers. Additionally, the Consumers Agreement established a procedure by which Sub-Contractors on the 2018 Consumers Project could be compensated for their outstanding prepetition claims. All known Project employees and Sub-Contractors were paid—in satisfaction of approximately \$12 million in the aggregate of prepetition claims—pursuant to this process. The remaining 2018 Consumers Project work was completed on or about December 1, 2018. Consumers and the Debtors executed a release of funds agreement, whereby the remaining excess funds of \$1.9 million that had been held in trust pursuant to the Consumers Agreement were released to the Debtors, made available for the Debtors’ general use, and became property of the Debtors’ Estates.

Additionally, under the Consumers Agreement, the Parties agreed that the operative contract for the 2019 Consumers Project was terminated for convenience as of November 9, 2018. However,

---

<sup>16</sup> All capitalized terms used in this Section III.D.3 that are not defined herein or in the Plan shall have the meanings provided to them in the Consumers Agreement. The summary of the Consumers Agreement provided herein is qualified in its entirety by reference to the Consumers Agreement. In the case of any inconsistency between the summary herein and the Consumers Agreement, the Consumers Agreement shall govern.

Consumers paid a Termination Fee of \$3.0 million to the Debtors, and also granted the Debtors the right to exercise either the Assignment Option (under which the Debtors had forty-five days to assume and assign the 2019 Consumers Project to a third-party contractor), or the Going-Concern Option (under which the Debtors could assume the 2019 Consumers Project without assignment). Closely working with the Committee’s professionals, the Debtors exercised the Assignment Option and assigned the 2019 Consumers Project to Snelson Companies, Inc. for \$2.5 million. The Bankruptcy Court approved the assumption and assignment on February 7, 2019. After satisfying all known creditor claims related to the Consumers Projects, the Debtors’ Estates netted approximately \$4.7 million for the benefit of their other stakeholders.

#### 4. ETP Agreement<sup>17</sup>

On October 19, 2018, ETP sent a letter to the Debtors purporting to terminate for cause the Debtors’ engagement on the ETP Project. The Debtors strenuously contested any alleged “for cause” termination and responded by rejecting Sunoco’s attempt to terminate the engagement due to its failure to comply with certain contractual notice obligations. Shortly after the Petition Date, the Debtors initiated an adversary proceeding against Sunoco for declaratory and injunctive relief that any attempt by Sunoco to exercise control over the Debtors’ property located on the ETP Project was prohibited by the automatic stay, and Filed a motion for a temporary restraining order to prevent Sunoco from interfering with equipment owned or leased by the Debtors.

Prior to a hearing on the temporary restraining order, the Debtors and Sunoco reached an agreement to resolve that dispute, and entered into that certain *Stipulation and Agreement between the Debtors, Sunoco Partners Marketing & Terminals, L.P. and Sunoco Pipeline, L.P.* The Debtors consented to termination of their engagement<sup>17</sup> on the ETP Project as of October 19, 2018. At its sole cost and expense, Sunoco agreed to arrange for transfer of all of the Debtors’ equipment located on the ETP Project to the Debtors’ headquarters as promptly as practicable. Also, Sunoco agreed to cooperate with the Debtors to remove them from the state regulatory permits that governed the ETP Project, and to use commercially reasonable best efforts to replace Welded on the permits with Sunoco’s new contractor, Precision Pipeline, LLC. Additionally, Sunoco agreed to indemnify and hold the Debtors harmless for any environmental liability related to the ETP Project arising from acts or omissions occurring on or after October 20, 2018. Finally, the Debtors and Sunoco agreed that they would commence discussions and work in good faith to resolve their outstanding claims.

On December 21, 2018, the Debtors sought approval of that certain *Stipulation and Settlement Agreement* between the Debtors and Sunoco [D.I. 360 (sealed) and 361 (redacted)] (the “**ETP Agreement**”) that resolved all their outstanding claims. Most notably, Sunoco agreed to directly pay approximately \$2 million to fund obligations of the Debtors related to prepetition union dues and benefits and approximately \$14.1 million to the Direct Pay Subcontractors, in full resolution of the three largest prepetition claims related to the ETP Project. Additionally, Sunoco established the Subcontractor Settlement Fund of \$40.0 million for payment of prepetition claims of the remaining Sub-Contractors on the ETP Project, and repaid demobilization costs of over

<sup>17</sup> All capitalized terms used in this Section III.D.4 that are not defined herein or in the Plan shall have the meanings provided to them in the ETP Agreement. The summary of the ETP Agreement provided herein is qualified in its entirety by reference to the ETP Agreement. In the case of any inconsistency between the summary herein and the ETP Agreement, the ETP Agreement shall govern.

\$100,000. All known Sub-Contractors on the ETP Project were paid on account of their prepetition claims in accordance with the ETP Agreement. Upon completion of the Certification Process outlined in the ETP Agreement, Sunoco and the Debtors executed a release of funds agreement, whereby the remaining excess funds of approximately \$5.6 million that had been held in trust in the Subcontractor Settlement Fund were released, made available for the Debtors' general use, and became property of the Debtors' Estates.

#### **D. Litigation**

In all, the Customer Project Completion Agreements substantially achieved the Debtors' primary goals of completing the unfinished Projects and getting Sub-Contractors paid for both pre- and post-petition goods and services. The Debtors are now, among other things, able to focus efforts on resolving or prosecuting the open claims against certain parties, including Customers with whom a global settlement has not yet been reached. These claims may result in the recovery of additional Assets for the Debtors' Estates, including, without limitation, those discussed herein. *The Debtors and their Estates reserve all rights with respect to the same.*

##### **1. Prepetition Litigation**

In addition to the prepetition litigation with Transco, as of the Petition Date, the Debtors were defendants in two OSHA actions commenced by the U.S. Department of Labor, which were subsequently resolved [D.I. 923]. All prepetition litigation in which the Debtors are defendants is stayed by section 362(a) of the Bankruptcy Code, except to the extent the Bankruptcy Court has granted relief from the automatic stay during these Chapter 11 Cases, which the Bankruptcy Court has with respect to certain litigation matters.

##### **2. Adversary Proceeding against Prime NDT Services, Inc.**

On March 27, 2019, the Debtors initiated an adversary proceeding against Prime NDT Services, Inc. ("**Prime**" and collectively with the Debtors, the "**Prime Litigation Parties**") in the Bankruptcy Court (the "**Prime NDT Litigation**"), by filing a complaint (the "**Prime Complaint**") for breach of the subcontract and warranty related to the ETP Project. As discussed more fully in the Prime Complaint, the Debtors sought to recover their direct and certain consequential costs to remediate irregularities in Prime's work. On April 26, 2019, Prime responded to the Prime Complaint with a partial motion to dismiss [Adv. D.I. 5] (the "**Prime MTD**") and a motion to withdraw the reference of the adversary proceeding [Adv. D.I. 7] (the "**Prime MTW**"). Subsequently, the matters were fully briefed [Adv. D.I. 12 and 14], and the Prime Litigation Parties submitted an agreed scheduling order regarding discovery and a litigation timeline, which was later amended four (4) times (the "**Prime Agreed Order**") [Adv. D.I. 16, 42, 52, 64 and 72]. On August 8, 2019, the Bankruptcy Court held a hearing to consider the Prime MTD. On August 13, 2019, the Bankruptcy Court issued a memorandum opinion denying the Prime MTD in its entirety [Adv. D.I. 30]. On February 5, 2020, the United States District Court for the District of Delaware (the "**District Court**") entered an order denying the Prime MTW and closing the District Court action [Adv. D.I. 111].

Meanwhile, in an effort to effectuate the ETP Agreement, Sunoco, the Debtors, and Prime entered into a *Subcontractor Direct Pay Agreement and Authorization* and a *Subcontractor's*

*Release of Liens and Claims* (the “**Prime Settlement Documents**”), which address claims related to the services, work, or supplies that Prime provided to the ETP Project. The Debtors required Prime to execute that certain *Escrow Agreement*, dated April 17, 2019 (the “**Prime Escrow Agreement**”), escrowing the funds paid pursuant to the Prime Settlement Documents pending resolution of the Prime NDT Litigation.

Pursuant to the Prime Agreed Order, the Prime Litigation Parties briefed case-dispositive motions and *motions in limine* [Adv. D.I. 85, 86, 87, 92, 93, 94 (sealed) & 95 (redacted)]. The Bankruptcy Court entered orders on the Prime Litigation Parties’ motions (i) denying Prime’s motion for partial summary judgment [Adv. D.I. 112], (ii) granting Prime’s motion *in limine* to preclude certain expert testimony from one (1) of the Debtors’ expert witnesses [Adv. D.I. 114], and (iii) denying Prime’s motion to preclude evidence of damages related to subcontractor direct pay [Adv. D.I. 115].

After months of negotiations, on the eve of trial, the Prime Litigation Parties agreed to settle Prime NDT Litigation pursuant to that certain *Settlement Agreement* dated as of February 27, 2020 (the “**Prime Settlement Agreement**”), which was approved by the Bankruptcy Court by an order [Adv. D.I. 130] dated March 19, 2020. Pursuant to the Prime Settlement Agreement, among other things: (i) Prime paid \$6.2 million (the “**Prime Payment**”) to the Debtors, which payment concluded the Prime NDT Litigation in its entirety; (ii) following receipt of the Prime Payment and submission of the Prime Settlement Agreement to the escrow agent in accordance with the Prime Escrow Agreement, the escrowed funds were released to Prime; and (iii) upon the Debtors’ receipt of the Prime Payment, the Prime Litigation Parties released all claims arising from Prime NDT Litigation, the ETP Project, and/or the subcontract against each other. The Prime NDT Litigation was dismissed on March 25, 2020.

### 3. **Adversary Proceeding against Williams and Transco; Williams Litigation Funding Agreement**

On May 3, 2019, the Partnership initiated an adversary proceeding in the Bankruptcy Court against Transco and two of its affiliates, Williams and Williams Partners Operating LLC (the “**Williams Litigation**”). As discussed more fully in its complaint (the “**Williams Complaint**”), the Partnership asserts that the defendants are improperly withholding or are otherwise liable for an amount in excess of \$70 million, among other actions, for breaching the parties’ contract and additional damages, fees, penalties and interest. The Partnership pleaded several counts against the defendants, including breach of contract, breach of implied covenants, tortious interference with contractual relationships, turnover of Estate property, declaratory judgment for violation of the automatic stay, impermissible setoff, unjust enrichment, objecting to Transco’s two proofs of claim (Claim numbers 632 & 636), declaratory judgment that no amounts are owed in connection with post-petition reconciliation of invoices, and violation of a Pennsylvania state statute governing Pennsylvania construction contracts. The Partnership also seeks attorneys’ fees against the defendants.

On May 22, 2019, the Bankruptcy Court entered an order [D.I. 745] approving that certain *Litigation Funding and Cooperation Agreement* (the “**Cooperation Agreement**”) between the Debtors, Federal Insurance Company and the Committee. The Cooperation Agreement resolved Federal Insurance Company’s assertion of equitable-subrogation rights, secured funding for the

Williams Litigation, and established a protocol to share the net proceeds of the recovery in such litigation. Federal Insurance Company agreed to fund up to \$2.5 million (with no interest or fees and subject to increase with prior written consent of the parties) for fees and costs actually incurred by the Debtors in prosecuting the Williams Litigation. The litigation funding is secured by a lien solely in any litigation proceeds and only to the extent of the funded amount. Under the Cooperation Agreement, the protocol for the disposition of the proceeds of a recovery in the Williams Litigation is as follows:

(a) Unless there is a Funding Termination Event (as defined in the Cooperation Agreement), Federal Insurance Company shall receive reimbursement of all amounts advanced for the Williams Litigation, with the remaining proceeds after such reimbursement defined for purposes of the Cooperation Agreement as the “**Net Proceeds.**”

(b) The Estates shall receive from the Net Proceeds—the Estates’ Share—the lesser of \$250,000 or the Net Proceeds (“**Estate Reimbursement**”) to cover the costs incurred by the Estates for maintaining staff and other resources necessary for the Williams Litigation.

(c) In addition to the Estate Reimbursement, the Estates will receive one of the following mutually exclusive payments:

(1) Where the Net Proceeds are less than or equal to \$5 million, the Estates will receive 10% of the Net Proceeds inclusive of the Estate Reimbursement. For example, if the Net Proceeds are equal to \$3 million, the Estates will receive \$50,000 in addition to the Estate Reimbursement.

(2) Where the Net Proceeds are greater than \$5 million and less than or equal to \$10 million, the Estates will receive \$750,000 in addition to the Estate Reimbursement (\$1 million total).

(3) Where the Net Proceeds are greater than \$10 million, the Estates shall receive 10% of the Net Proceeds inclusive of the Estate Reimbursement. For example, if the Net Proceeds are equal to \$12 million, the Estate will receive \$950,000 in addition to the Estate Reimbursement.

The remaining Net Proceeds—the Surety Bond Share—shall be used to satisfy the Surety Bond Claim. As noted above and further herein, the projected recoveries for Holders of Allowed Surety Bond Claims and General Unsecured Claims may be materially impacted by any recovery in the Williams Litigation.

On July 3, 2019, the defendants filed a motion to abstain, and in the alternative, to transfer venue, and in the alternative, to dismiss, and a supporting brief [Adv. D.I. 24 and 25]. The Partnership filed a responding brief on July 26, 2019 [Adv. D.I. 31]. On August 8, 2019, the defendants, in turn, filed their reply brief [Adv. D.I. 36]. On August 22, 2019, the Bankruptcy Court held oral argument on the defendants’ motion. On October 16, 2019, the Bankruptcy Court issued a memorandum opinion granting in part and denying in part the defendants’ motion [Adv. D.I. 48].

First, the Bankruptcy Court denied the defendants' motions to abstain and to transfer venue, holding that the Bankruptcy Court was the appropriate place to resolve the Williams Litigation. Second, the Bankruptcy Court dismissed certain non-contract based claims asserted in the Williams Complaint for failure to state a claim upon which relief could be granted, including the counts for turnover of Estate property and violation of the automatic stay.

On October 28, 2019, the Partnership filed a motion for partial summary judgment on the discrete issues that (i) Pennsylvania's Contractor and Subcontractor Payment Act applies to the Contract between Transco and Welded; and (ii) Transco breached the payment provisions of its Contract with the Partnership [Adv. D.I. 50 & 55]. On December 20, 2019, the parties completed briefing on the Partnership's motion for partial summary judgment. As of the filing of this Disclosure Statement, the Partnership's motion for partial summary judgment remains pending before the Bankruptcy Court and the defendants have requested oral argument [Adv. D.I. 83 & 86]. The parties involved in the Williams Litigation are conducting discovery.

#### 4. Lien Enforcement Actions

A number of Sub-Contractors filed *in rem* lawsuits against Columbia Gas and/or Welded in West Virginia state court, asserting mechanics' lien claims against certain real property interests of Columbia Gas in West Virginia (collectively, the "**Lien Actions**"). Generally, the Lien Actions assert that the Sub-Contractor is owed money for work performed on the Columbia Gas Project. The asserted Lien Actions do not assert liens on the Debtors' Assets and, to the extent named, the Debtors are nominal defendants in such actions.

Eleven of the Lien Actions (the "**Transferred Lien Actions**") were removed to the United States Bankruptcy Court for the Northern District of West Virginia, and transferred to the United States District Court for the District of Delaware. Based on the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, the Transferred Lien Actions were referred to the Bankruptcy Court. The Transferred Lien Actions currently pending before the Bankruptcy Court are as follows: *Earth Pipeline Services, Inc. v. Columbia Gas Transmission, LLC*, Adv. Case Nos. 19-50274 (CSS) and 19-50275 (CSS) (the "**EPS Litigation**"); *Schmid Pipeline Construction, Inc. v. Columbia Gas Transmission, LLC and Welded Construction, L.P.*, Adv. Case No. 19-50886 (CSS) (the "**Schmid Litigation**"); *CADD Enterprises, L.L.C. v. Columbia Gas Transmission, LLC and Welded Construction, L.P.*, Adv. Case Nos. 19-50887 (CSS), 19-50888 (CSS), 19-50889 (CSS) and 19-50890 (CSS); *Sunbelt Equipment Marketing, Inc. v. Columbia Gas Transmission, LLC, TransCanada USA Services Inc., and Welded Construction, LP*, Adv. Case Nos. 20-50445 (CSS) and 20-50447 (CSS); and *Sunbelt Tractor & Equipment Company, Inc. v. Columbia Gas Transmission, LLC, TransCanada USA Services, Inc. and Welded Construction, LP*, Adv. Case Nos. 20-50446 (CSS) and 20-50448 (CSS). On February 19, 2020, CADD Enterprises, L.L.C. and Columbia Gas Transmission, LLC entered into that certain Settlement and Release Agreement, resulting in a release of liens and claims stemming from the Columbia Gas Project against the Debtors' estates. As of the date hereof, seven Lien Actions remain pending and unresolved.



### E. Sale; Miscellaneous Asset Sale Transactions

The Debtors, in consultation with their professional advisors, investigated and analyzed a number of strategies to preserve and maximize the value of their Assets, including their equipment. Indeed, realizing the value of the Debtors' owned and leased equipment was a critical component of the chapter 11 process, including as security for the DIP and for recoveries on creditor claims not satisfied under the Customer Agreements.

While the Debtors heavily considered many restructuring options, they concluded that under the circumstances of these Chapter 11 Cases the best way to maximize the value of their Assets for the benefit of creditors was to conduct an orderly sale process of their equipment and other Assets. As a result, in December 2018, the Debtors, working with the Committee, commenced a nearly three-month competitive process to market their Assets, solicit proposals and select a proposal(s) that would facilitate the Debtors' goal of maximizing the value of their Assets.

After conducting a comprehensive, competitive marketing and sale process with input and involvement from their key creditor constituencies, the Debtors sought approval [D.I. 581] of the sale (the "**Sale**") of substantially all of their tangible assets (collectively, the "**Acquired Assets**") and entry into the Agency Agreement, dated as of March 22, 2019 (together with the First Amendment to Agency Agreement by and among the Debtors, the Agent (defined below) and Caterpillar Financial Services Corporation ("**CFSC**"), dated as of April 18, 2019, and the Second Amendment to Agency Agreement by and among the Debtors and the Agent, dated as of June 26, 2019, the "**Agency Agreement**") with Gordon Brothers Commercial & Industrial, LLC and Ritchie Bros Auctioneers (America) Inc. (together, the "**Agent**"). The Sale was structured so that the Agent would sell substantially all of the Debtors' Acquired Assets, including, as described below, certain equipment leased to the Debtors by CFSC (the "**CFSC Equipment**") free and clear of all encumbrances on the Debtors' behalf in exchange for a guaranteed payment of at least \$20.0 million<sup>18</sup> in Cash to the Debtors, subject to the resolution of the Asset Impairment Notices (as defined in the Agency Agreement), plus the sharing of proceeds in excess of the first \$2.0 million after the Agent was reimbursed for the guaranteed payment from the first \$20.0 million in sales proceeds, all in accordance with the terms of the Agency Agreement. Additionally, the Agency Agreement provided for the payoff in full of all remaining obligations under the DIP Facility.

After executing the Agency Agreement, the Debtors, working with the Committee, continued to negotiate with the Agent and CFSC over the inclusion of the CFSC Equipment in the Sale. Ultimately, the Debtors, the Agent and CFSC agreed to amend the Agency Agreement to include the CFSC Equipment in the Sale, and agreed that the Agent would pay the buyout price to CFSC for the CFSC Equipment, for which the Agent would be reimbursed from the proceeds of the Sale of the CFSC Equipment. Thereafter, the Debtors and the Agent would share any remaining proceeds of the Sale of the CFSC Equipment in the amounts and percentages as provided in the Agency Agreement. . An additional benefit provided through the Agency Agreement and the inclusion of the CFSC Equipment in the Sale was the elimination of approximately \$19 million in potential rejection damages and other claims.

---

<sup>18</sup> As described in more detail below, the Debtors and the Agent agreed to reduce the guaranteed payment by \$1.0 million to resolve the Agent's Asset Impairment Notices and the Debtors' objections thereto.

On April 17, 2019, the Bankruptcy Court entered an order approving the Sale and the Agency Agreement (as amended) [D.I. 655] (the “**Sale Order**”), and the Sale closed on April 19, 2019.

After the entry of the Sale Order, the Debtors and the Agent engaged in extensive negotiations regarding the Agent’s Asset Impairment Notices and the Debtors’ objections thereto, and reached an agreement regarding the same, which was memorialized in that certain *Settlement Agreement and Second Amendment to Agency Agreement* (the “**Second Amendment**”). The Second Amendment fixed the Asset Impairment Value at \$1.0 million and resolved the Asset Impairment Notices. On June 28, 2019, the Bankruptcy Court entered a supplemental Sale Order approving the Second Amendment [D.I. 812].

On June 25, 2019, June 27, 2019 and June 28, 2019, the Agent conducted auctions for the sale of certain of the Acquired Assets (collectively, the “**Auction**”). Additionally, the Agent conducted private treaty sales of certain of the Acquired Assets (the “**Private Sales**” and collectively with the Auction, the “**Initial Sales**”).

On August 1, 2019, after the results of the Initial Sales were tallied, the Debtors and the Agent entered into a *First Reconciliation Agreement*, pursuant to which the Debtors and the Agent agreed on the payments to be made to the Debtors and the Agent pursuant to the Agency Agreement. Under this agreement, the Debtors received an additional \$10.6 million. On December 3, 2019, the Bankruptcy Court approved the *Second Reconciliation Agreement* between the Debtors and the Agent resulting in an additional \$83,137.50 of proceeds to the Debtors [D.I. 1134]. The aggregate proceeds received by the Debtors through the sales authorized through the Agency Agreement was approximately \$30.4 million.

In August 2019, the Debtors also commenced the second leg of their sale process by engaging the services of real estate broker, Reichle Klein Group, Inc., to market their corporate headquarters in Perrysburg, Ohio for sale. After conducting a comprehensive, competitive marketing and sale process with input and involvement from their key creditor constituencies, the Debtors sought approval [D.I. 1066] of the private sale of the headquarters (the “**Property Sale**”) to Michels Corporation for an aggregate purchase price of \$2,706,000 pursuant to that certain *Purchase and Sale Agreement* effected as of October 25, 2019 (the “**Purchase Agreement**”).

On November 18, 2019, the Bankruptcy Court entered an order approving the Property Sale and the Purchase Agreement [D.I. 1101], and the Property Sale closed on November 21, 2019.

In addition to consummating the Sale, during the course of the Chapter 11 Cases, the Debtors consummated a number of Proposed Miscellaneous Asset Sales (as defined in the Miscellaneous Asset Sale Procedures Order) pursuant to the terms of the Miscellaneous Asset Sale Procedures Order (defined below). See D.I. 326, 339, 344, 404, 483 and 484.

## **F. Executory Contracts and Unexpired Leases**

As of the Petition Date, the Debtors were parties to hundreds of executory contracts and unexpired leases. Such contracts and leases covered, most notably, a vast quantity of construction equipment deployed across various Projects in a number of states. The Debtors undertook a thorough analysis of leased equipment and related executory contracts and unexpired leases and, pursuant to several motions, sought authority to reject numerous such contracts and leases [D.I. 262,

318, 356, 451, 455, 641 and 814] (the “**Rejection Motions**”). The Rejection Motions were approved by orders of the Bankruptcy Court [D.I. 324, 421, 442, 446, 454, 469, 521, 698, 874, 875, 1023 and 1119]. Certain parties objected to the Rejection Motions and, as of the date hereof, the Debtors have been working with those parties toward a mutual resolution of those objections. The Debtors worked diligently to ensure the safe return of the leased and rented equipment, as well as the mitigation of damages claims through the processing of millions of dollars of insurance claims. The remainder of the Debtors’ executory contracts and unexpired leases will be assumed or rejected pursuant to the Plan or additional motions to assume or reject executory contracts and unexpired leases.

### **G. Additional Orders**

On and after the Petition Date, the Debtors also Filed a number of customary motions and applications to retain professionals and to streamline the administration of these Chapter 11 Cases. The Bankruptcy Court entered the following orders granting such motions and applications:

- Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals [D.I. 230];
- Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date [D.I. 231];
- Order Authorizing Employment and Retention of Kurtzman Carson Consultants LLC as Administrative Advisor to the Debtors *Nunc Pro Tunc* to the Petition Date [D.I. 233];
- Order, Pursuant to Section 327(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, Authorizing the Retention of Young Conaway Stargatt & Taylor, LLP as Counsel for the Debtors, *Nunc Pro Tunc* to the Petition Date [D.I. 234];
- Order Authorizing the Debtors to (A) Employ and Retain Zolfo Cooper Management, LLC to Provide Interim Management Services and (B) Designate Frank Pometti as Debtors’ Chief Restructuring Officer *Nunc Pro Tunc* to the Petition Date [D.I. 236];<sup>19</sup>
- Order Establishing Procedures for Sales of Certain Miscellaneous Assets Outside the Ordinary Course of Business Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code [D.I. 245] (the “**Miscellaneous Asset Sale Procedures Order**”);
- Order Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [D.I. 403] (the “**Bar Date Order**”); and
- Order (I) Establishing Bar Dates for Filing Administrative Expense Claims, Other than 503(b)(9) Claims, and (II) Approving the Form and Manner of Notice Thereof [D.I. 554] (the “**Administrative Claim Bar Date Order**”).

---

<sup>19</sup> On November 1, 2018, AlixPartners, LLP (“**AlixPartners**”) acquired all of the membership interests of Zolfo Cooper, LLC (“**Zolfo Cooper**”). Since this acquisition, Zolfo Cooper has continued to provide services to the Debtors as Zolfo Cooper, operating as a subsidiary of AlixPartners.

In addition, the Committee Filed applications to retain professionals and the Bankruptcy Court entered the following orders granting such applications:

- Order Authorizing the Official Committee of Unsecured Creditors of Welded Construction, L.P., *et al.*, to Retain and Employ Blank Rome LLP as Its Counsel Pursuant to 11 U.S.C. §§ 328 and 1103, Fed. R. Bankr. P. 2014, and Local R. 2014-1 *Nunc Pro Tunc* to October 30, 2018 [D.I. 311]; and
- Order Granting Application of the Official Committee of Unsecured Creditors for an Order under Bankruptcy Code Sections 328 and 1103, Bankruptcy Rule 2014, and Local Rule 2014-1 Approving the Employment and Retention of Teneo Capital LLC as Investment Banker and Financial Advisor *Nunc Pro Tunc* to October 30, 2018 [D.I. 314].

#### **H. Key Employee Incentive Plans, Key Employee Retention Plans**

The Debtors filed several motions seeking approval of key employee incentive plans (“**KEIPs**”) and key employee retention plans (“**KERPs**”) to incentive and retain certain key employees during critical periods in these Chapter 11 Cases. Generally, the purpose of such plans was to incentivize the Debtors’ employees to maximize the value of the Debtors’ Assets and combat, among other things, the negative employee morale that typically results from the uncertainties and increased burdens of an employer’s debtor-in-possession status.

First, on November 19, 2018, the Bankruptcy Court approved the KERP for the Columbia Gas Project [D.I. 244]. At the request of Columbia Gas, the plan was formulated to incentivize certain of the Debtors’ rank and file employees who were working on Spread 1 of the Columbia Gas Project until completion of the Debtors’ obligations on the Columbia Gas Project or until their craft or services were no longer needed on that project. Columbia Gas funded the KERP.

Second, on November 30, 2018, the Bankruptcy Court approved the Debtors’ first KEIP and KERP [D.I. 289], which ensured that the Debtors’ could maintain their business operations, preserve their financial condition, provide critical Project management and oversight and meet their debtor-in-possession duties during the pendency of these Chapter 11 Cases. The payment of KEIP bonuses was conditioned on the achievement of certain milestones under the Columbia Gas Agreement. The payment of KERP bonuses was conditioned on the applicable employee’s continued employment through the earlier of (i) March 31, 2019 or (ii) the employee’s termination without cause before March 31, 2019. The payment of the KERP bonuses was also conditioned on the employees waiving their rights to severance payments.

Third, on April 16, 2019, the Bankruptcy Court approved the Debtors’ second KEIP and KERP [D.I. 646]. The plans provide performance incentives to certain insider members of the Debtors’ workforce and encourage the retention of certain valuable and hard-to-replace non-insider members of the Debtors’ workforce. Payments under the second KEIP are based on the level of gross proceeds generated from the monetization of the remaining Assets of the Debtors and their Estates. Payments under the second KERP were conditioned on the applicable employee’s continued employment through the earlier of (i) September 27, 2019 or (ii) the employee’s termination without cause before September 27, 2019. The KERP participants continued their

employment with the Debtors through the requisite period, and the KERP payments were paid shortly thereafter.

## **I. Appointment of Committee**

On October 30, 2018, the U.S. Trustee appointed the Committee in these Chapter 11 Cases. The counsel to the Committee is Blank Rome LLP, and the investment banker and financial advisor to the Committee is Teneo Capital LLC. The Committee originally consisted of Ohio Machinery Co., Cleveland Brothers Equipment Co., Inc.; United Piping, Inc.; PipeLine Machinery International, LP; Earth Pipeline Services, Inc.; IUOE and Pipe Line Employers Health & Welfare Fund; and Schmid Pipeline. As of February 4, 2019, United Piping, Inc. resigned from the Committee.

## **J. Claims Process and Bar Dates**

### **1. Schedules, Statements of Financial Affairs**

The Debtors Filed their Schedules as well as their Statements of Financial Affairs on December 18, 2018 [D.I. 333, 334, 335 and 336]. On July 3, 2019, the Debtors Filed certain amendments to their Schedules [D.I. 817] (the “**Schedules Amendments**”).

### **2. Claims Bar Dates**

On January 10, 2019, the Bankruptcy Court entered the Bar Date Order providing that, except as otherwise provided therein, the deadline for (a) all persons or entities (including, without limitation, individuals, partnerships, corporations, joint ventures and trusts) that assert a claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtors, including without limitation, any claims under section 503(b)(9) of the Bankruptcy Code, secured claims and priority claims, which arose prior to the Petition Date, to file a proof of any such claim was 5:00 p.m. (prevailing Eastern Time) on February 28, 2019 (the “**General Bar Date**”);<sup>20</sup> and (b) all governmental units, as defined in section 101(27) of the Bankruptcy Code, to file a proof of any such claim was 5:00 p.m. (prevailing Eastern Time) on April 22, 2019 (the “**Government Bar Date**”).

The Bar Date Order also provides that if the Debtors amend or supplement the Schedules subsequent to the date of service of the Bar Date Notice (as defined in the Bar Date Order), then the Debtors shall give notice of any such amendment or supplement to the holders of claims affected thereby, and such holders shall be afforded the later of (a) the General Bar Date or (b) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days from the date on which such notice is given, to file proofs of claim in respect of their claims (the “**Supplemental Bar Date**”). In connection with the Schedules Amendments, the Supplemental Bar Date was 5:00 p.m. (ET) on August 2, 2019.

<sup>20</sup> The Debtors entered into stipulations with Federal Insurance Company whereby the General Bar Date was extended for Federal Insurance Company as provided for therein first through and including 5:00 p.m. (ET) on April 30, 2019, later further extended through and including 5:00 p.m. (ET) on August 30, 2019, and then subsequently further extended through and including 5:00 p.m. (ET) on the date that is ten (10) days after the date that the Bankruptcy Court enters an order approving this Disclosure Statement. D.I. 520, 694, 809 and 978.

Additionally, pursuant to the Bar Date Order, except as otherwise provided by another order of the Bankruptcy Court, any person or entity that holds a claim arising from the rejection of an executory contract or unexpired lease (a “**Rejection Damages Claim**”) must file a proof of claim on account of such Rejection Damages Claim on or before the later of (a) the General Bar Date or (b) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty-five (35) days following the entry of the order approving the rejection of the executory contract or unexpired lease pursuant to which the entity asserting the Rejection Damages Claim is a party (the “**Rejection Damages Bar Date**”).

On March 11, 2019, the Bankruptcy Court entered the Administrative Claim Bar Date Order, providing that the deadline for each person or entity, including, without limitation, individuals, partnerships, corporations, joint ventures, trusts and governmental units, that holds or wishes to assert an administrative expense claim pursuant to sections 365 or 503(b) of the Bankruptcy Code or otherwise, other than Section 503(b)(9) Claims, against the Debtors’ Estates (each, an “**Administrative Expense Claim**”), which claim arose during the period from the Petition Date through and including March 31, 2019, to file a request for allowance of such Administrative Expense Claim was 5:00 p.m. (prevailing Eastern Time) on April 30, 2019 (collectively with the General Bar Date, the Government Bar Date, the Supplemental Bar Date and the Rejection Damages Bar Date, the “**Bar Dates**”).

Notice of the Bar Dates was provided by mail and publication in accordance with the procedures outlined in the Bar Date Order and the Administrative Bar Date Order.

### **3. Claims Reconciliation**

Over 835 proofs of claim have been filed against the Debtors’ Estates. As part of the claims reconciliation process, the Debtors have filed ten substantive and non-substantive objections to claims [D.I. 721, 811, 839, 840, 888, 889, 962, 963, 1039 and 1040], as well as six notices of satisfied claims and scheduled amounts [D.I. 792, 873, 934, 1062, 1162 and 1248]. As a result of these efforts, the claims pool has been reduced by approximately \$140 million.

As of the date of this Disclosure Statement, inclusive of amounts set forth in the Schedules and not superseded by filed proofs of claims, there are approximately \$803 million in Claims asserted against the Debtors and their Estates, including \$585 million in Surety Bond Claims, \$203 million in General Unsecured Claims and \$4.3 million in Convenience Claims. *However, this amount does not reflect the actual liabilities owed by the Debtors, because, among other things, certain of these Claims are invalid claims for various reasons, including being filed after the applicable Bar Date and not likely to be Allowed Claims. The Claims that remain pending and unsatisfied against each Debtor as of the date hereof are, except as otherwise noted therein, accounted for in the Liquidation Analysis (as defined below) attached hereto. As explained therein and more fully below, the analysis reflects certain assumptions regarding, among other things, proofs of claim that were filed against more than one Debtor, certain proofs of claim that are contingent and/or disputed, certain proofs of claim that have been filed in partially or wholly unliquidated amounts, and certain proofs of claim that assert invalid claims that are not likely to be Allowed Claims. The Liquidation Analysis also assumes that any claims objections pending as of the date of this Disclosure Statement will be granted. Because of these and other reasons, the amount of Claims against the Debtors’ Estates that will ultimately become Allowed Claims remains uncertain, but the Liquidation Analysis represents the best estimate of the Debtors at this time.*

In the near term, the Debtors anticipate filing additional claims objections.

#### **IV. SUMMARY OF THE CHAPTER 11 PLAN**

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan, and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors, the Debtors' Estates, all parties receiving property under the Plan, and other parties in interest.

##### **A. Purpose and Effect of the Plan**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its stakeholders. Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (a) is impaired under or has accepted the plan or (b) receives or retains any property under the plan.

The Plan provides for the distribution of the proceeds of the liquidation of Assets of the Debtors to various Holders of Allowed Claims as contemplated under the Plan and for the wind-up the Debtors' corporate affairs. The Plan also provides for the appointment of a Plan Administrator that will, among other things, administer and liquidate or otherwise resolve all remaining Assets of the Debtors, including the Retained Causes of Action.

Under the Plan, Claims against, and Interests in, the Debtors are divided into Classes according to their relative priority and other criteria. If the Plan is confirmed by the Bankruptcy Court and consummated, the Allowed Claims and Interests of the various Classes will be treated in accordance with the provisions in the Plan for each such Class, and the Plan Administrator will make Distributions as provided in the Plan. A general description of the Classes of Claims and Interests created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan are described below.

##### **B. Substantive Consolidation**

Solely for purposes of voting and distributions in connection with the Plan, pursuant to Section 5.2 of the Plan, the Assets, Claims and affairs of the Debtors and their Estates shall be "substantively consolidated." In other words, solely for such purposes, the separateness of the

Debtors and the Estates will be ignored, and the Debtors and the Estates will be treated as if they were one Debtor and one Estate.

More specifically, on and after the Effective Date, and except as otherwise set forth in the Plan: (a) all Assets and liabilities of the Debtors shall be treated as though they were pooled; (b) each Claim Filed or to be Filed against any Debtor, as to which each of the Debtors is co-liable as a legal or contractual matter, shall be deemed Filed as a single Claim against, and a single obligation of, the Debtors; (c) all Claims held by one Debtor against the other Debtor shall be cancelled or extinguished; (d) no Distributions shall be made under the Plan on account of any Claim held by one Debtor against the other Debtor; (e) the Interests shall be cancelled; (f) no Distributions shall be made under the Plan on account of any Interest held by a Debtor in any other Debtor; (g) all guarantees of any Debtors of the obligations of any other Debtor shall be eliminated so that any Claim against any Debtor and any Claim based upon a guarantee thereof executed by any other Debtor shall be treated as one Claim against the substantively consolidated Debtors; and (h) any joint or several liability of any of the Debtors shall be one obligation of the substantively consolidated Debtors and any Claims based upon such joint or several liability shall be treated as one Claim against the substantively consolidated Debtors.

The Plan is predicated on the treatment of Surety Bond Claims, General Unsecured Claims and Convenience Claims without regard to the specific Debtor as to which the Holders of such Claims assert their Claims. Absent the substantive consolidation proposed under the Plan, the process of winding down the Debtors' Estates and administering Distributions could be more time consuming and costly. Furthermore, as permitted by section 1123(a)(5)(C) of the Bankruptcy Code, a vote of the Voting Classes of Claims in favor of such treatment is a basis for substantive consolidation in these Chapter 11 Cases. The Plan does not propose substantive consolidation to deprive a specific Creditor or group of Creditors of their rights while providing a windfall to other Creditors. Rather, given the expense involved in winding down the Debtors' Estates and administering Distributions, recoveries by Creditors should be maximized by consolidating the Assets and liabilities of the Debtors as provided for in the Plan. Accordingly, the Debtors believe that substantive consolidation of the Debtors, for purposes of voting and distribution in connection with the Plan, is in the best interest of the Debtors' Estates and parties in interest.

## **C. Plan Administrator**

### **1. Appointment; Duties**

Not less than ten (10) days prior to the commencement of the Confirmation Hearing and subject to Bankruptcy Court approval in connection with Confirmation of the Plan, the Committee, in consultation with the Debtors and Federal Insurance Company, shall designate the Person who initially will serve as the Plan Administrator.

### **2. Plan Administrator Agreement**

(a) Plan Administrator as a Fiduciary. The Plan Administrator shall be a fiduciary of each of the Debtors' Estates and the Post-Effective Date Debtors, and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administrator Agreement.



(b) Provisions of the Plan Administrator Agreement and Confirmation Order. The Plan Administrator Agreement and the Confirmation Order shall provide that: (i) the Plan Administrator shall have no duties until the occurrence of the Effective Date, and on and after the Effective Date, shall be a fiduciary of each of the Post-Effective Date Debtors and the Estates; (ii) if the Plan is withdrawn or otherwise abandoned prior to the occurrence of the Effective Date, the Plan Administrator position shall thereafter be dissolved; (iii) on and after the Effective Date, the Plan Administrator shall perform the functions of a Liquidating trustee of the Partnership as provided in sections 17-803 and 17-804 of the Delaware Revised Uniform Limited Partnership Act (the “**LP Act**”); and (iv) the Plan Administrator shall be subject to the terms of the Surety Cooperation Agreement Order.

### **3. Powers and Duties**

(a) General Powers and Duties. From and after the Effective Date, pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall, in consultation with the Plan Oversight Committee, be empowered and directed to: (i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Plan Administrator under the Plan or the Plan Administrator Agreement; (ii) comply with the Plan and the obligations hereunder; (iii) employ, retain or replace professionals to represent him or her with respect to his or her responsibilities; (iv) object to Claims as provided in the Plan and prosecute such objections; (v) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim; (vi) establish, replenish or release any reserves as provided in the Plan, as applicable; (vii) exercise such other powers as may be vested in the Plan Administrator pursuant to the Plan, the Plan Administrator Agreement or any other order of the Bankruptcy Court, including the Confirmation Order, or otherwise act on behalf of and for the Debtors and the Post-Effective Date Debtors from and after the Effective Date; (viii) file applicable tax returns for any of the Debtors; (ix) liquidate any of the Assets; and (x) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action subject to the terms of the Surety Cooperation Agreement Order. The Plan Administrator may, without the need for further Court approval, retain legal counsel and financial advisors to advise him or her in the performance of his or her duties, which counsel and advisors may be counsel and advisors for the Debtors and the Committee.

(b) Distributions. Pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall make the required Distributions specified under the Plan and in accordance with the Plan.

(c) Reserves. On the Effective Date, the Plan Administrator shall establish reserves, as required by the Plan or as otherwise determined to be appropriate in his or her sole discretion.

### **4. Compensation of the Plan Administrator**

The Estates and the Post-Effective Date Debtors shall pay the reasonable fees and expenses of the Plan Administrator and the Plan Administrator Professionals. If a party disputes the reasonableness of any such invoice and such dispute is not resolved by agreement, the Plan Administrator or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice

shall not be paid until the dispute is resolved. The undisputed portion of such reasonable fees and expenses shall be paid as provided in the Plan. The Plan Administrator shall provide summary invoices to the Plan Oversight Committee prior to payment of any such invoice.

#### **5. Indemnification of the Plan Administrator, the Plan Oversight Committee, and Related Parties**

The Debtors and the Post-Effective Date Debtors shall indemnify and hold harmless: (a) the Plan Administrator (solely in his or her capacity as such); (b) the Plan Administrator Professionals; and (iii) the Plan Oversight Committee and Plan Oversight Committee Members (solely in their capacities as such) (collectively, the “**Indemnified Parties**”), with respect to any and all liabilities, losses, damages, claims, costs and expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such post-Effective Date actions or omissions, taken in connection with the Plan, the Plan Administrator Agreement and the Confirmation Order, other than acts or omissions, resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud) or gross negligence, with respect to all actions. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (a) any payment on account of such claim shall be paid solely from the Estates and (b) the legal fees and related costs incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estates or any insurance. The indemnification provisions of the Plan Administrator Agreement shall remain available to and be binding upon any former Plan Administrator or the estate of any decedent of the Plan Administrator and shall survive the termination of the Plan Administrator Agreement.

#### **6. Insurance**

The Plan Administrator shall be authorized to obtain and pay for, out of the funds of the Estates, all reasonably necessary insurance coverage for himself or herself, his or her agents, representatives, employees or independent contractors and the Debtors, including, but not limited to, coverage with respect to: (a) any property that is or may in the future become the property of the Debtors or their Estates; and (b) the liabilities, duties and obligations of the Plan Administrator and his or her agents, representatives, employees or independent contractors under the Plan Administrator Agreement, the latter of which insurance coverage may remain in effect for a reasonable period of time as determined by the Plan Administrator after the termination of the Plan Administrator Agreement.

#### **7. Preservation of Retained Causes of Action**

Except as expressly set forth in the Plan or the Confirmation Order, the Post-Effective Date Debtors shall retain all Retained Causes of Action and nothing contained in the Plan or the Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Retained Causes of Action. Subject to the provisions relating to Preference Actions below, the Post-Effective Date Debtors or the Plan Administrator, as applicable, shall have, retain, reserve and be entitled to assert all such Retained Causes of Action as fully as if these Chapter 11 Cases had not been commenced, and all of the Post-Effective Date Debtors’ legal and equitable rights respecting any

Claim that are not specifically waived or relinquished by the Plan, the Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date to the same extent as if these Chapter 11 Cases had not been commenced. Solely to the extent that the Plan Oversight Committee Chairperson, individually and on its own behalf and sole discretion, consents, the Plan Administrator may pursue and/or litigate one or more Preference Actions, and upon such conditions as the Plan Oversight Committee Chairperson determines appropriate upon consultation with the Plan Oversight Committee as to the potential benefits such Preference Action(s) may bring after conducting an appropriate cost-benefit analysis (including weighing the potential impact upon Holders of any Surety Bond Claims) against the benefit to the Estates. For the avoidance of doubt, the Plan Administrator is authorized to pursue Preference Actions under conditions required by the Plan Oversight Committee Chairperson if, in the Plan Administrator's business judgment, the pursuit of such Preference Actions under such required conditions is expected to result in a net benefit to the creditors.

### **8. Creation of the Plan Oversight Committee**

On or before ten (10) days prior to the commencement of the Confirmation Hearing and subject to Bankruptcy Court approval in connection with Confirmation of the Plan, the Committee, in consultation with the Debtors, may appoint up to two (2) Plan Oversight Committee Members, and the designated Plan Oversight Committee Chairperson, in consultation with the Debtors, may appoint up to one (1) Plan Oversight Committee Members. Each Plan Oversight Committee Member shall be authorized to act in accordance with the Plan and the Plan Administrator Agreement. Plan Oversight Committee Members shall serve without compensation and shall be entitled to reimbursement of actual, reasonable expenses incurred in the course of discharging their responsibilities as Plan Oversight Committee Members if such expenses have been approved by the Plan Administrator prior to being incurred. For the avoidance of doubt, Plan Oversight Committee Members shall not be entitled to reimbursement of fees and expenses of such Plan Oversight Committee Members' legal counsel or other professional advisors.

### **9. Standing of the Plan Oversight Committee**

The Plan Oversight Committee shall have independent standing to appear and be heard in the Bankruptcy Court as to any matter relating to the Plan, the Plan Administrator Agreement, the Estates or the Post-Effective Date Debtors, including any matter as to which the Bankruptcy Court has retained jurisdiction pursuant to Article X of the Plan.

### **10. Function and Duration of the Plan Oversight Committee**

The Plan Oversight Committee shall have the rights and responsibilities set forth in the Plan and the Plan Administrator Agreement, including instructing and supervising the Plan Administrator with respect to its responsibilities under the Plan and the Plan Administrator Agreement. The Plan Oversight Committee shall remain in existence until such time as the final Distributions under the Plan have been made.

### **11. Recusal of Plan Oversight Committee Members**

A Plan Oversight Committee member shall recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Plan Administrator with respect to the Claims,

Retained Causes of Action or rights of such Plan Oversight Committee Member, the entity appointing such Plan Oversight Committee Member, or any affiliate of the foregoing.

## 12. Funding of Reserves

(a) Professional Fee Reserve. On the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve as set forth in Section 11.2 of the Plan.

(b) Administrative and Priority Claims Reserve. On the Effective Date, the Plan Administrator shall set aside Cash in the amount of the Administrative and Priority Claims Estimate, which Cash shall be used by the Post-Effective Date Debtors to fund the Administrative Claims Reserve. The Cash so transferred shall not be used for any purpose other than to pay Unclassified Claims (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve), Secured Claims and Priority Claims. The Plan Administrator (i) shall segregate in an account and shall not commingle the Cash held in the Administrative and Priority Claims Reserve and (ii) subject to the terms and conditions of the Plan and the Plan Administrator Agreement, shall, in accordance with the Plan, pay each Unclassified Claim (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve), Secured Claim and Priority Claim, on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After all Unclassified Claims (except Professional Fee Claims), Secured Claims and Priority Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Plan Administrator, any remaining Cash in the Administrative and Priority Claims Reserve shall first be applied to pay any outstanding Allowed Professional Fee Claims and any remaining amounts shall be returned by the Plan Administrator to the Post-Effective Date Debtors for further distribution in accordance with the Plan.

(c) Other Reserves. The Plan Administrator shall use Cash to establish and administer any other necessary reserves that may be required to effectuate the Plan and the Distributions to Holders of Allowed Claims hereunder or Plan Administrator Agreement, including the Disputed Claims Reserve and the Convenience Claims Reserve.

### **D. Estimated Recoveries for Holders of Surety Bond Claims, General Unsecured Claims and Convenience Class Claims**

The Debtors estimate that Holders of Allowed Surety Bond Claims in these Chapter 11 Cases should recover approximately 21% of the total amount of their Allowed Claims. The Debtors further estimate that Holders of Allowed General Unsecured Claims in these Chapter 11 Cases should recover approximately 21% of the total amount of their Allowed Claims. The Debtors have calculated these projected recoveries for Holders of Surety Bond Claims and General Unsecured Claims by taking into account, among other variables: (a) the total estimated amount of Allowed Surety Bond Claims and Allowed General Unsecured Claims; and (b) the total estimated amount of Cash available for Distributions to Holders of Allowed Surety Bond Claims and Allowed General Unsecured Claims. These estimates do not account for potential additional recoveries based on Retained Causes of Action and other Assets. Actual recoveries may differ from these projected recoveries as a result of, among other reasons: (a) actual recoveries with respect to the Retained Causes of Action; (b) an increase in the total amount of Allowed Administrative or Priority Claims from current estimates; and (c) the total amount of Surety Bond Claims or Allowed General

Unsecured Claims differing significantly from the current estimated amounts, including increases or reductions based on the rejection of executory contracts and unexpired leases of the Debtors.

To date, the amount of filed Surety Bond Claims not currently subject to a pending objection is \$580.8 million, and the amount of filed General Unsecured Claims fully adjudicated or subject to a pending objection is approximately \$205.8 million. However, the Debtors estimate that the anticipated Allowed Surety Bond Claims approximate \$76.1 million, and anticipated Allowed General Unsecured Claims approximate \$20.7 million, subject to potential adjustments. The Debtors estimate that the number of Allowed General Unsecured Claims, excluding Convenience Class Claims, is approximately 68. The estimated amount and number of Convenience Class Claims is, respectively \$5.0 million and 366.

After the Effective Date, the Plan Administrator may obtain additional Cash from (a) recoveries with respect to the Retained Causes of Action, and (b) any other potential recoveries with respect to the Debtors' remaining Assets. As of April 20, 2020, the Debtors' Cash on hand in the aggregate is approximately \$28.2 million. However, the Cash has been or will be increased by the Partnership Settlement and outstanding litigation reimbursement receivables, and reduced by, among other things, (a) the Plan Administrator Professional Fees; (b) any other wind-down fees, costs and expenses of the Debtors; and (c) Claims required to be paid by the Estates pursuant to the Plan with priority over Allowed General Unsecured Claims. After considering all of these variables and others, the Debtors estimate Cash available for Distributions for Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Class Claims of approximately \$26.5 million. This does not take into account any potential recoveries with respect to the Retained Causes of Action that the Plan Administrator may pursue.

## **E. Treatment of Unclassified Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Section 3.1 of the Plan.

### **1. Administrative Claims**

Except as otherwise provided for in the Plan, the Confirmation Order, or separate order of the Bankruptcy Court, on, or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) thirty (30) days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing.

### **2. Professional Fee Claims**

*All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Debtors, and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise*

**ordered by the Bankruptcy Court.** Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Debtors, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional). All Professional Fee Claims shall be paid by the Estates to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve, which shall only be used to pay (i) Professional Fee Claims and (ii) any claims of Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable) for compensation or reimbursement of costs and expenses relating to services provided to the Debtors during the period from the Petition Date through the Effective Date, unless and until all Professional Fee Claims and any such claims of Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable) have been paid in full, otherwise satisfied, or withdrawn. The Professional Fee Reserve shall vest in the Estates and shall be maintained by the Plan Administrator in accordance with the Plan and the Plan Administrator Agreement. The Estates shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims and unpaid claims of Zolfo Cooper Management, LLC and AlixPartners, LLP, as applicable, for compensation or reimbursement of costs and expenses relating to services provided to the Debtors during the period from the Petition Date through the Effective Date. If the Debtors and the Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released to the Estates to be used for other purposes consistent with the Plan and the Plan Administrator Agreement.

### **3. Priority Tax Claims**

In full satisfaction of such Claims, Holders of Allowed Priority Tax Claims shall be paid by the Post-Effective Date Debtors, at the Post-Effective Date Debtors' discretion, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs; and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Post-Effective Date Debtors shall have agreed upon in writing.

### **F. Classification and Treatment of Claims and Interests**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, withdrawn or otherwise settled prior to the Effective Date.

**1. Class 1: Secured Claims**

On, or as soon as reasonably practicable after, the later of (a) the Effective Date and (b) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive from the Post-Effective Date Debtors, at the discretion of the Post-Effective Date Debtors, in full satisfaction of such Allowed Secured Claim, (a) Cash equal to the value of such Claim; (b) the return of the Holder's Collateral securing such Claim; (c) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (d) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. ***Class 1 is Unimpaired, and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.***

**2. Class 2: Priority Claims**

On, or as soon as reasonably practicable after, the later of (a) the Effective Date and (b) thirty (30) days following the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of such Allowed Priority Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Priority Claim, either (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. ***Class 2 is Unimpaired, and therefore Holders of Priority Claims are conclusively presumed to have accepted the Plan.***

**3. Class 3: Surety Bond Claim**

On, or as soon as reasonably practicable after, the Effective Date, the Holder of any Allowed Surety Bond Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Surety Bond Claim, (a) the Surety Bond Share and its Pro Rata share of the General Unsecured Claim Distribution (i.e., Pro Rata on a combined dollar for dollar basis with the Holders of Allowed Class 4 Claims); or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. ***Class 3 is Impaired, and therefore Holders of Surety Bond Claims are entitled to vote on the Plan.***

**4. Class 4: General Unsecured Claims**

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed General Unsecured Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed General Unsecured Claim, (a) its Pro Rata share of the General Unsecured Claim Distribution (i.e., Pro Rata on a combined dollar for dollar basis with the Holder of the Allowed Class 3 Claim), or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. ***Class 4 is Impaired, and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.***

**5. Class 5: Convenience Claims**

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Convenience Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Convenience Claim, Cash equal to 50% of the amount of such Allowed Convenience

Claim, up to a maximum recovery of \$50,000. *Class 5 is Impaired, and therefore Holders of Convenience Claims are entitled to vote on the Plan.*

**6. Class 6: Subordinated Claims**

On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims. *Class 6 is deemed to have rejected the Plan, and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.*

**7. Class 7: Interests**

As of the Effective Date, all Interests of any kind, including, without limitation, the GP Interests and LP Interests, shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or consideration under the Plan on account of such Interests. *Class 7 is deemed to have rejected the Plan, and therefore Holders of Interests are not entitled to vote on the Plan.*

**8. Special Provisions Regarding Insurance**

Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers Bankruptcy Court jurisdiction, or requires a party to opt out of any releases):

(a) subject to Section 3.5(e) of the Plan, on the Effective Date, the Insurance Contracts shall vest, unaltered and in their entirety with the Post-Effective Date Debtors, and all debts, obligations, and liabilities of the Debtors (and, after the Effective Date, of the Post-Effective Date Debtors) thereunder, whether arising before or after the Effective Date, shall survive and shall not be amended, modified, waived, released, discharged or impaired in any respect, all such debts, obligations, and liabilities of the Debtors (and, after the Effective Date, of the Post-Effective Date Debtors) shall be satisfied by the Post-Effective Date Debtors in the ordinary course of business, and the Insurers shall not need to or be required to file or serve any objection to a proposed cure amount or a request, application, Claim, proof or motion for payment or allowance of any Claim or Administrative Claim and shall not be subject to any bar date or similar deadline governing cure amounts, proofs of Claim or Administrative Claims;

(b) for the avoidance of doubt, subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.10 of the Plan, if there is available insurance, any party with rights against or under the applicable Insurance Contract, including, without limitation, the Estates, the Post-Effective Date Debtors and Holders of Insured Claims, may pursue such rights, and the Post-Effective Date Debtors may, but shall not be required to, move to limit an Insured Claim to the Face Amount of such Insured Claim less the total coverage available with respect to that Insured Claim under the Insurance Contracts; provided, however, that doing so in no way obligates an Insurer to pay any portion of the Insured Claim or otherwise alters an Insurer's coverage defenses; provided further, however, that, subject to Section 3.5(e) of the Plan, nothing



alters or modifies the duty, if any, that Insurers have to pay Insured Claims covered by the Insurance Contracts and the Insurers' right to seek payment or reimbursement from the Debtors (or after the Effective Date, the Post-Effective Date Debtors); provided finally, however, the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article XI of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (I) all current and former employees of the Debtors to proceed with any valid workers compensation claims they might have in the appropriate judicial or administrative forum; (II) direct action claims against an Insurer under applicable non-bankruptcy law to proceed with their claims; (III) the Insurers to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (A) any valid workers compensation claims, (B) claims where a claimant asserts a direct claim against any Insurer under applicable non-bankruptcy law, or an order has been entered by the Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its Insured Claim, and (C) all costs in relation to each of the foregoing; and (IV) the Insurers to cancel any Insurance Contracts, to the extent permissible under applicable non-bankruptcy and bankruptcy law, and in accordance with the terms of the Insurance Contracts (other than on the basis of any outstanding pre-petition claims against the Debtors, their Estates or the Post-Effective Date Debtors arising from or related to such Insurance Contracts);

(c) nothing in Section 3.5 of the Plan shall constitute a waiver of any causes of action the Debtors, their Estates or the Post-Effective Date Debtors may hold against any Entity, including any Insurers. Nothing in Section 3.5 of the Plan is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a recovery from any Insurer in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtors, their Estates, and the Post-Effective Date Debtors do not waive, and expressly reserve their rights to assert that the proceeds of the Insurance Contracts are an Asset and property of the Estates to which they are entitled to the extent that the Debtors are entitled to assert first-party claims pursuant to the terms and conditions of the applicable Insurance Contract;

(d) subject to Section 3.5(e) of the Plan, nothing shall modify the scope of, or alter in any other way, the rights and obligations of the Insurers, the Debtors (or, after the Effective Date, the Post-Effective Date Debtors), or any other individual or entity, as applicable, under the Insurance Contracts, and all such rights and obligations shall be determined under the Insurance Contracts and applicable non-bankruptcy law as if the Chapter 11 Cases had not occurred, and, for the avoidance of doubt, the Insurers shall retain any and all rights, claims and defenses to liability and/or coverage that they have under the Insurance Contracts, including the right to contest and/or litigate with any party, including the Debtors and the Post-Effective Date Debtors, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable Insurance Contract; and

(e) any payment, pecuniary, reimbursement or other financial or monetary obligations of the Debtors, their Estates or the Post-Effective Date Debtors owing to the Insurers under the Insurance Contracts, including, but not limited to, reimbursement for payments within a deductible, shall be satisfied solely from existing collateral and/or security, if any, held by the Insurers in the ordinary course and pursuant to the terms of the Insurance Contracts, and to the extent that any such collateral and/or security is insufficient to satisfy any such obligations, the Insurers shall have no recourse to the Debtors, their Estates or the Post-Effective Date Debtors, and hereby waive any and all claims against, and rights to a Distribution from, the Debtors, their Estates and the Post-Effective Date Debtors.

## **9. Provision Governing Allowance and Defenses to Claims**

On and after the Effective Date, the Post-Effective Date Debtors shall have all of the Debtors' and the Estates' rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtors, the Estates and the Post-Effective Date Debtors in respect of any Claim not Allowed by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs or recoupment against such Claims. The Post-Effective Date Debtors may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estates or the Post-Effective Date Debtors may have against the Claim Holder, including, without limitation, Avoidance Actions and Preference Actions, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Post-Effective Date Debtors of any such Claim it may have against such Claim Holder. The Post-Effective Date Debtors may (a) designate any Claim as Allowed at any time from and after the Effective Date and (b) may designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

### **G. Acceptance or Rejection of the Plan**

#### **1. Impaired Class of Claims Entitled to Vote**

*Only the votes of Holders of Claims in Classes 3, 4 and 5 shall be solicited with respect to the Plan.*

#### **2. Acceptance by an Impaired Class**

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, Classes 3, 4 and 5, respectively, shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and more than one-half ( $\frac{1}{2}$ ) in number of the Claims allowed for purposes of Plan voting pursuant to the Disclosure Statement Order that have timely and properly voted to accept or reject the Plan.

#### **3. Presumed Acceptances by Unimpaired Classes**

Class 1 and Class 2 are Unimpaired under the Plan. *Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of the Holders of such Claims shall not be solicited.*

#### **4. Impaired Classes Deemed to Reject Plan**

Holders of Subordinated Claims and Interests in Class 6 and Class 7 are not entitled to receive or retain any property or interests in property under the Plan. *Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.*

## **5. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

## **6. Elimination of Vacant Classes**

Any Class of Claims that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of a Claim allowed for purposes of Plan voting pursuant to the Disclosure Statement Order, shall be deemed eliminated from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

### **H. Implementation of the Plan**

#### **1. Implementation of the Plan**

The Plan will be implemented by, among other things, the approval of the Plan Settlement Agreement and Indemnity Agreement, the appointment of the Plan Administrator, the formation of the Plan Oversight Committee, and the making of Distributions from the Assets, including, without limitation, all Cash, the Plan Settlement Payment, and the proceeds, if any, from the Retained Causes of Action, by the Post-Effective Date Debtors in accordance with the Plan and the Plan Administrator Agreement.

Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estates, including all claims, rights, Retained Causes of Action and any property acquired by the Debtors under or in connection with the Plan, including as a result of the Plan Settlement, shall vest in the Post-Effective Date Debtor Welded Construction, L.P., free and clear of all Claims, Liens, charges, other encumbrances and Interests subject to the substantive consolidation provided for in the Plan.

#### **2. Substantive Consolidation for Plan Purposes Only**

Except as otherwise provided in Section 5.2 of the Plan, each Debtor shall continue to maintain its separate corporate existence after the Effective Date for all purposes, other than the treatment of Claims and Distributions under the Plan. Except as expressly provided in the Plan (or as otherwise ordered by the Bankruptcy Court), on the Effective Date for purposes of voting to accept or reject the Plan and Distributions: (i) the Assets and liabilities of the Debtors shall be deemed merged or treated as though they were merged into and with the Assets and liabilities of the Partnership; (ii) all guaranties of the Debtors of the obligations of any other Debtor shall be deemed eliminated and extinguished so that any Claim against any Debtor, and any guarantee thereof executed by any Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the Partnership; (iii) each and every Claim filed or to be filed in either of the Chapter 11 Cases shall be treated as filed against the consolidated Debtors and shall be treated as one Claim against and obligation of the Partnership; (iv) all Intercompany Claims shall be eliminated and extinguished, and holders of Intercompany Claims shall not receive any Distributions or retain any

property pursuant to the Plan on account of such Intercompany Claims; and (v) for purposes of determining the availability of the right of set off under section 553 of the Bankruptcy Code, the Debtors shall be treated as one entity, Welded Construction, L.P., so that, subject to the other provisions of section 553 of the Bankruptcy Code, debts due to any of the Debtors may be set off against the debts of any of the other Debtors. Such substantive consolidation shall not (other than for purposes relating to the Plan) affect the legal and corporate structures of the Post-Effective Date Debtors. Moreover, such substantive consolidation shall not affect any subordination provisions set forth in any agreement relating to any Claim or Interest or the ability of the Post-Effective Date Debtors to seek to have any Claim or Interest subordinated in accordance with any contractual rights or equitable principles. Notwithstanding anything in Section 5.2 of the Plan to the contrary, all post-Effective Date fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, if any, shall be calculated on a separate legal entity basis for each Post-Effective Date Debtor.

### **3. The Debtors' Post-Effective Date Corporate Affairs**

#### **(a) Debtors' Officers and Managers**

On the Effective Date, each of the Debtors' officers and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

#### **(b) Dissolution and Cancellation of the Debtors**

(a) Welded Construction Michigan, LLC. On the Effective Date, the Plan Administrator will be appointed to manage the Subsidiary in consultation with the Plan Oversight Committee, in accordance with the Plan and the Plan Administrator Agreement. Following the implementation of the Plan, the administration and distribution of the Debtors' Assets in accordance with the terms of the Plan, and the winding down of the Subsidiary's affairs, without the need for any further order or action of the Bankruptcy Court, Subsidiary will be dissolved and its affairs will be wound up in accordance with Michigan law. The Plan Administrator is authorized to take, in consultation with the Plan Oversight Committee, all actions reasonably necessary to dissolve the Subsidiary, and neither the Plan Administrator nor the Post-Effective Date Debtors shall be required to pay any taxes or fees in order to cause such dissolution and termination of the Subsidiary's existence. As the Partnership is the sole member of the Subsidiary, the interest in Subsidiary is an asset in the Partnership's Estate.

(b) Welded Construction, L.P. On the Effective Date, pursuant to the Plan, all of the Interests in the Partnership, including, without limitation, all of the GP Interests and the LP Interests, are deemed automatically canceled, in exchange for no consideration to the Holders thereof. Upon such cancellation, the Partnership will have no general partners and no limited partners. As a consequence, the Partnership will thereupon automatically dissolve pursuant to section 17-801(4) of the LP Act.

Notwithstanding the dissolution of the Partnership, it will continue to exist as a separate legal entity, pursuant to section 17-201(b) of the LP Act, until the filing with the Delaware Secretary of State of a Certificate of Cancellation canceling the Partnership's Certificate of Limited Partnership

(which filing is not subject to any statutory deadline). During the period between the Partnership's dissolution and the filing of the Certificate of Cancellation, the Partnership's business and affairs will be wound up under sections 17-803(b) and 17-804 of the LP Act. Subject to the terms of the Plan, such winding up may involve, among other things, prosecuting suits by and defending suits against the Partnership; settling and closing the Partnership's business, if any; liquidating, disposing of, and conveying the Partnership's property; paying, discharging, or making reasonable provision for the Partnership's liabilities; and taking all actions permitted under the Plan. The winding up will be carried out by or under the direction of the Plan Administrator, in consultation with the Plan Oversight Committee. The Plan Administrator will be the Liquidating trustee of the Partnership as provided in sections 17-803 and 17-804 of the LP Act.

When the Plan Administrator shall have implemented the Plan, administered and distributed the Debtors' Assets in accordance with the terms of the Plan, and otherwise completed winding up the business and affairs of the Partnership, the Plan Administrator shall, in consultation with the Plan Oversight Committee, cause the Partnership's Certificate of Limited Partnership to be canceled under section 17-203(a) of the LP Act by filing a Certificate of Cancellation with the Delaware Secretary of State. The Plan Administrator is authorized to take, after consultation with the Plan Oversight Committee, all actions reasonably necessary to cause such cancellation, and neither the Plan Administrator nor the Post-Effective Date Debtors shall be required to pay any taxes or fees in order to cause such cancellation. Regardless of when such winding up is completed, under no circumstances will such Certificate of Cancellation be filed before the Subsidiary shall have been dissolved and its affairs completely wound up.

## **I. Executory Contracts and Unexpired Leases**

### **1. Executory Contracts and Unexpired Leases**

Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date, other than the Plan Settlement Agreement, the Indemnity Agreement, the Litigation Funding and Cooperation Agreement and the Insurance Contracts, including, without limitation, those identified in the Plan Supplement. For the avoidance of doubt, any post-petition consulting agreements shall not be deemed rejected as of the Effective Date. ***Any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, at the address below, within thirty-five (35) days of the Effective Date, and shall also serve such proof of claim upon the Plan Administrator.***

Welded Construction Claims Processing Center  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

## **2. Rejection Claims**

Any Rejection Claims that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Post-Effective Date Debtors may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

### **J. Provisions Governing Distributions**

#### **1. Interest on Claims**

Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan or the Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

#### **2. Distributions by Post-Effective Date Debtors**

The Plan Administrator or its designee, on behalf of the Post-Effective Date Debtors, shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Post-Effective Date Debtors may hire professionals or consultants to assist with making Distributions). The Post-Effective Date Debtors shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, the Confirmation Order and the Plan Administrator Agreement. The Post-Effective Date Debtors shall not be required to give any bond or surety or other security for the performance of the Plan Administrator's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

#### **3. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the initial distribution date by the Post-Effective Date Debtors. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan and the Plan Administrator Agreement. No Distribution shall be made on account of, without limitation, any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of claim has not been timely filed; or (iii) is evidenced by a proof of claim that has been amended by a subsequently filed proof of claim.

#### **4. Means of Cash Payment**

(a) Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Post-Effective Date Debtors, by wire, check or such other method as the Post-Effective Date Debtors deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Post-Effective Date Debtors, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks issued by the Post-Effective Date Debtors shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof. Requests for

reissuance of any check within ninety (90) days of the date of the issuance thereof shall be made directly to the Post-Effective Date Debtors.

(b) For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

## **5. Fractional Distributions**

Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

## **6. De Minimis Distributions**

Notwithstanding anything to the contrary contained in the Plan, the Post-Effective Date Debtors shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against the Estates.

## **7. Delivery of Distributions**

All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in these Chapter 11 Cases (subject to, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Post-Effective Date Debtors) or, in the absence of a Filed proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Post-Effective Date Debtors shall use reasonable efforts to determine such Holder's then-current address, but shall have no affirmative obligation to locate such current address. If the Post-Effective Date Debtors cannot determine, or is not notified of, a Holder's then-current address within ninety (90) days after the Effective Date, the Distribution reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Post-Effective Date Debtors a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Post-Effective Date Debtors to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Post-Effective Date Debtors shall be held in trust on behalf of the Holder of the Allowed Claim to which they are payable by the Post-Effective Date Debtors until the earlier of the date that such undeliverable Distributions are claimed by such Holder and ninety (90) days after the date the undeliverable Distributions were made. The Post-Effective Date Debtors shall have no obligation to recognize the sale or transfer of any Claim that occurs after the Confirmation Date.

**8. Withholding, Payment and Reporting Requirements with Respect to Distributions**

All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority and all Distributions shall be subject to any such withholding, payment and reporting requirements. The Post-Effective Date Debtors shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. The Post-Effective Date Debtors may require, in the Post-Effective Date Debtors' sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Post-Effective Date Debtors the appropriate Form W-8 or Form W-9, as applicable, to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Estates in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Post-Effective Date Debtors for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Estates in connection with such Distribution.

**9. Setoffs**

The Post-Effective Date Debtors may, but shall not be required to, set off against any Claim, any payments, Retained Causes of Action or other Distributions to be made by the Post-Effective Date Debtors pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtors or the Estates may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Estates, or the Post-Effective Date Debtors of any such claim that it may have against such Holder; provided further, that if the Post-Effective Date Debtors set off any Avoidance Action or Retained Cause of Action against the recovery to any Holder of a Claim pursuant to Section 7.9 of the Plan, the Post-Effective Date Debtors shall not be deemed to have impaired, estopped, waived, or released any rights to prosecute the same such Avoidance Action or Retained Cause of Action against any other Person or Entity.

**10. No Distribution in Excess of Allowed Amounts**

Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

**11. Allocation of Distributions**

All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.



## **12. Forfeiture of Distributions**

If the Holder of an Allowed Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a) of the Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7 of the Plan, or fails to complete and return to the Post-Effective Date Debtors the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the written request by the Post-Effective Date Debtors for the completion and return to it of the appropriate form pursuant to Section 7.8 of the Plan, then such Holder shall be deemed to have forfeited its right to any Distributions from the Estates (or the proceeds thereof) and the Post-Effective Date Debtors. The forfeited Distributions shall become unrestricted Assets, and shall be redistributed to the Holders of Allowed Claims in accordance with the terms of the Plan after reserving as necessary for payment of expenses of the Plan Administrator and otherwise in compliance with the Plan and the Plan Administrator Agreement. In the event the Post-Effective Date Debtors determine, in the Post-Effective Date Debtors' sole discretion, that any such amounts are too small in total to economically redistribute to the Holders of Allowed Claims, the Post-Effective Date Debtors may instead donate such amounts to a charitable organization(s) free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

## **K. Procedures for Resolving Disputed, Contingent and Unliquidated Claims and Distributions with Respect Thereto**

### **1. Claims Administration Responsibility**

Except as otherwise specifically provided in the Plan and the Plan Administrator Agreement, after the Effective Date, the Post-Effective Date Debtors shall have the sole authority (a) to file, withdraw or litigate to judgment objections to Claims; (b) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; (c) to amend the Schedules in accordance with the Bankruptcy Code; and (d) to administer and adjust the claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. Any agreement entered into by the Post-Effective Date Debtors (acting in accordance with the terms of the Plan Administrator Agreement) with respect to the allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

### **2. Claim Objections**

All objections to Claims (other than (a) Administrative Claims and (b) Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of the Plan) shall be Filed by the Post-Effective Date Debtors on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion Filed by the Post-Effective Date Debtors on or before the Claim Objection Deadline with notice only to those parties entitled to notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the Filing of such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a final order is entered by the Bankruptcy Court. In the event that such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the then-current Claim Objection Deadline (as previously extended, if applicable) or thirty (30) days after entry of an order denying the motion to extend the Claim Objection Deadline.

### **3. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan or the Plan Administrator Agreement, no payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by a Final Order, and the Disputed Claim has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors or the Post-Effective Date Debtors on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

### **4. Estimation of Contingent or Unliquidated Claims**

The Post-Effective Date Debtors may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the Claims objection, estimation and resolution procedures in Section 8 of the Plan are cumulative and are not necessarily exclusive of one another.

### **5. Central States Claim Estimation**

Pursuant to sections 105(a), 502(c), and 1142(b) of the Bankruptcy Code and in accordance with Section 8.4, the Central States Claim shall be estimated at \$0.00 solely for purposes of determining the General Unsecured Claim Distribution and any related reserve. The Central States Claim estimation is properly estimated at \$0.00 solely for distribution and reserve purposes to avoid undue delay in the administration of these Chapter 11 Cases and is supported by, without limitation, the indemnity contained in the Plan Settlement Agreement. The rights of all parties with respect to the allowance, liquidation or determination of liability with respect the Central States Claim are preserved, including, without limitation, all rights to object to or otherwise oppose the Central States Claim for any reason in the Bankruptcy Court and any other court or tribunal of competent jurisdiction, including any arbitration proceedings.

### **6. Amendments to Claims**

On or after the Effective Date, a Claim may not be Filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Post-Effective Date Debtors and any such new or amended Claim Filed without prior authorization shall be deemed disallowed in full and expunged without any further action. Any Claims filed after the applicable deadlines in the Bar Date Orders or the Plan shall be automatically deemed disallowed in full and expunged without further action.

**L. Conditions Precedent to the Occurrence of the Effective Date**

**1. Conditions to Confirmation**

The following are conditions precedent to confirmation of the Plan, each of which must be satisfied or waived in accordance with Section 9.3 of the Plan:

(i) the provisions of the Confirmation Order that relate to the Plan Settlement Agreement and the Indemnity Agreement shall be in form and substance reasonably acceptable to the Debtors, the Partner Settlement Parties and the Committee and shall, among other things:

(A) provide that the Debtors are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created under or in connection with the Plan; and

(B) provide that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall be immediately effective, subject to the terms and conditions of the Plan; and the Confirmation Order shall have been entered by the Bankruptcy Court.

(ii) each of the Plan Settlement Agreement and Indemnity Agreement shall be signed by all parties and in a form acceptable to the Debtors and Committee.

**2. Conditions to the Occurrence of the Effective Date**

The occurrence of the Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.3 of the Plan:

(i) the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtors and the Committee;

(ii) the Confirmation Order shall not be subject to any stay;

(iii) the Plan Administrator Agreement shall have been executed, and a Plan Administrator and Plan Oversight Committee shall have been appointed;

(iv) the Professional Fee Reserve shall be funded in Cash pursuant to and in accordance with Sections 5.7 and 11.2 of the Plan in an amount agreed to by the Debtors and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court; and

(v) all actions, documents, and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be reasonably satisfactory to the Debtors and the Committee, and such actions, documents, and agreement shall be effected or executed and delivered.

### **3. Waiver of Conditions to the Occurrence of the Effective Date**

The conditions to the Effective Date set forth in Section 9.2 of the Plan may be waived in writing by mutual written agreement, including by electronic mail, of the Debtors and the Committee at any time without further Order.

### **4. Effect of Non-Occurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.2 and 9.3 of the Plan, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to Section 9.4 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtors, the Estates or any other Person, or (b) prejudice in any manner the rights of the Debtors, the Estates or any other Person or Entity.

## **M. Retention of Jurisdiction**

### **1. Scope of Retained Jurisdiction**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, these Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and any agreement or order of the Bankruptcy Court with respect to a sale of the Debtors' Assets prior to the Effective Date and enforce remedies upon any default under the Plan and any such sale agreement or order;

(e) hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters that are pending as of the Effective Date, that are arising out of, under, or related to, these Chapter 11 Cases, including, without limitation, the Retained Causes of Action,

and that are with respect to the Plan. For the avoidance of doubt, the Bankruptcy Court shall retain jurisdiction over (1) the Williams Litigation; (2) the Schmid Litigation; and (3) the EPS Litigation;

(f) enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created, executed or contemplated in connection with the Plan, the Disclosure Statement or the Confirmation Order, including, without limitation, the Plan Settlement and the Indemnity Agreement;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan, including, without limitation, the Plan Settlement and the Indemnity Agreement;

(h) consider any modifications of the Plan, cure any defect or omission or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the implementation, consummation or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such Orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or Final Order of the Bankruptcy Court, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with these Chapter 11 Cases, including, without limitation, the Plan Settlement and the Indemnity Agreement and any and all customer completion agreements, including, but not limited to, the (1) Columbia Gas Agreement, (2) each of the Commitment Letters, (3) the Consumers Agreement and (4) the ETP Agreement (each discussed more fully in this Disclosure Statement);

(m) except as otherwise limited in the Plan, recover all Assets of the Debtors, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits or disputes related to the Estates, including, but not limited to, the Debtors' Assets; and

(q) enter a final decree closing these Chapter 11 Cases.

## **2. Failure of the Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 10.1 of the Plan, the provisions of Article X of the Plan shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **N. Miscellaneous Plan Provisions**

### **1. Administrative Claims Bar Date**

*All requests for payment of an Administrative Claim arising on or after April 1, 2019 through and including the Effective Date must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtors and counsel to the U.S. Trustee no later than thirty five (35) days after the Effective Date.* In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

### **2. Professional Fee Claims**

*(a) All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtors and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtors, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional);*

(b) All Professional Fee Claims shall be paid by the Estates to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On or before the Effective Date, the Debtors shall establish the Professional Fee Reserve, which shall only be used to pay (i) Professional Fee Claims and (ii) any claims of Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable) for compensation or reimbursement of costs and expenses relating to services provided to the Debtors during the period from the Petition Date through the Effective Date, unless and until all Professional Fee Claims and any such claims of Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable) have been paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estates and shall be maintained by the Post-Effective Date Debtors in accordance with the Plan and the Plan Administrator Agreement. The Estates shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims and unpaid claims of Zolfo Cooper Management, LLC and AlixPartners, LLP, as applicable, for compensation or reimbursement of

costs and expenses relating to services provided to the Debtors during the period from the Petition Date through the Effective Date. If the Debtors and the Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released back to the Estates to be used for other purposes consistent with the Plan and the Plan Administrator Agreement.

### **3. Payment of Statutory Fees; Filing of Quarterly Reports**

All fees payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Estates, the Post-Effective Date Debtors and the Plan Administrator in the ordinary course. The Post-Effective Date Debtors and the Plan Administrator shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code for each Debtor until its particular case is closed, dismissed or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

### **4. Dissolution of Committee**

On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals or other agents thereof shall be released from all rights and duties arising from or related to these Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's attorneys and financial advisors and other agents shall terminate; provided, however, that the Committee shall continue in existence and its Professionals shall continue to be retained with respect to (i) applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code and (ii) any appeals of the Confirmation Order.

### **5. Modifications and Amendments**

(a) The Debtors may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Debtors shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtors or the Post-Effective Date Debtors, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan, or the Confirmation Order, and such

matters as may be necessary to carry out the purpose and effect of the Plan. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

#### **6. Post-Effective Date Compromises and Settlements**

From and after the Effective Date, the Post-Effective Date Debtors may compromise and settle Claims against the Debtors and their Estates, as well as the Retained Causes of Action, without any further approval by or notice to the Bankruptcy Court, except with respect to the Williams Litigation, which shall be treated in accordance with the Surety Cooperation Agreement Order.

#### **7. Binding Effect of Plan**

Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by section 1141(e) of the Bankruptcy Code.

#### **8. Non-Discharge of the Debtors; Injunction**

**In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtors. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests. As such, no Person or Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtors and their Estates or the Post-Effective Date Debtors other than Assets or property required to be distributed to that Person or Entity under the Plan. As of the Effective Date, all parties are precluded from asserting against any Assets or property of the Debtors and their Estates and the Post-Effective Date Debtors any Claims, rights, causes of action, liabilities or Interests based upon any act, omission, transaction or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.**

Except as otherwise expressly provided for in the Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

(a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors, their Estates, the post-Effective Date Debtors, the Post-Effective Date Debtors, their successors and assigns and any of their Assets and properties;

(b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtors, their Estates, the post-Effective Date Debtors, the Post-Effective Date Debtors, their successors and assigns and any of their Assets and properties;



(c) creating, perfecting or enforcing any encumbrance of any kind against the Debtors, their Estates, the post-Effective Date Debtors, the Post-Effective Date Debtors, their successors and assigns and any of their Assets and properties;

(d) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtors, their Estates, the post-Effective Date Debtors, the Post-Effective Date Debtors or their successors and assigns or against any of their Assets and properties, except to the extent that a right to setoff or subrogation is asserted in a timely filed proof of claim; or

(e) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim, Interest or cause of action released or settled hereunder.

From and after the Effective Date, all Persons and Entities are permanently enjoined from commencing or continuing in any manner against the Debtors, their Estates, the post-Effective Date Debtors, the Released Parties, their successors and assigns and any of their Assets and properties, any suit, action or other proceeding, on account of or respecting any claim, interest, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

## 9. Releases and Related Matters

(a) Releases by Debtors. As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of these Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and these Chapter 11 Cases, including, without limitation, the Plan Settlement, the Released Parties are deemed forever released by the Debtors and the Estates, and anyone claiming by or through the Debtors and the Estates, from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtors and the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Estates, these Chapter 11 Cases, the Plan, the Disclosure Statement or related agreements, instruments or other documents in these Chapter 11 Cases. For the avoidance of doubt, with respect to contingent Claims asserted by Debtors' current or former officers and managers, the Plan Administrator retains all rights to reconcile such Claims, consistent with the Plan Settlement Agreement.

(b) Releases by Holders of Claims. As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the

administration of these Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and these Chapter 11 Cases, including, without limitation, the Plan Settlement, and subject to Section 11.11(e) of the Plan, each of the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtors and the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Releasing Party would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Estates, these Chapter 11 Cases, the Plan, the Disclosure Statement or related agreements, instruments or other documents; provided, however, that nothing herein shall be deemed a waiver or release of any right of any such Releasing Parties to receive a Distribution pursuant to the terms of the Plan; provided further, however, that the foregoing provisions of this release in Section 11.11(b) of the Plan shall not operate to waive, release or otherwise impair any causes of action arising from criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. For the avoidance of doubt, notwithstanding anything to the contrary herein, the foregoing release by the Releasing Parties is not, and shall not be deemed to be, in exchange for a waiver of the Debtors' rights or claims against the Releasing Parties, including the Debtors' rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved. Notwithstanding any of the foregoing, nothing in Section 11.11(b) of the Plan is intended to limit or otherwise modify any releases or waivers that are separately provided for in any other Final Order (including settlement or other agreements authorized thereby) of the Bankruptcy Court.

(c) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval of the releases set forth in Section 11.11 of the Plan; and (ii) the Bankruptcy Court's findings that, among other things, such releases are (1) in the best interests of the Debtors, the Estates and all Holders of Claims that are Releasing Parties, (2) fair, equitable and reasonable, (3) given and made after due notice and opportunity for objection and hearing, (4) consensual, (5) supported by consideration, and (6) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(d) Each Holder of a Claim in Class 4 and 5 shall be a Releasing Party and, as such, provides the releases set forth in Section 11.11(b) of the Plan, unless such Holder timely submits a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.11(b) of the Plan, or Files an objection to the releases in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan.

(e) Federal Insurance Company Release. On behalf of itself and any person or entity claiming by or through Federal Insurance Company or any of its Related Parties, Federal Insurance Company grants the releases set forth in Section 11.11(b) of the Plan to each of the

**Released Parties except for the direct claims against the Debtors, which are preserved, and except for any claims arising under or relating to (a) bonds issued on behalf of entities other than Welded Construction, L.P., and associated indemnity agreements, (b) insurance contracts and related agreements, including collateral agreements, pertaining to the Released Parties, and (c) any other contract to which a Released Party is a direct party.**

#### **10. Exculpation and Limitation of Liability**

**On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any postpetition act or omission in connection with, relating to, or arising out of these Chapter 11 Cases, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of the Plan, the Disclosure Statement, the Plan Administrator Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with the Plan, or the administration of the Plan or the Assets and property to be distributed under the Plan; provided, however, that the exculpation provisions of Section 11.12 of the Plan shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by such Exculpated Party, as determined by a Final Order. The Confirmation Order and the Plan shall serve as a permanent injunction against any Person or Entity seeking to enforce any claim or cause of action against the Exculpated Parties pursuant to Section 11.12 of the Plan.**

#### **11. Terms of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays provided for in these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect.

#### **12. Revocation, Withdrawal or Non-Consummation**

The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent chapter 11 plans of liquidation. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Interests in, any Debtor, or any Avoidance Actions, Retained Causes of Action or other claims by or against any Debtor or any Entity, (ii) prejudice in any manner the rights of any Debtor or any Entity in any further proceedings involving a Debtor or (iii) constitute an admission of any sort by any Debtor or any other Entity.

### **13. Preservation of Retained Causes of Action**

#### **(a) Vesting of Causes of Action.**

Except as otherwise provided in the Plan or Confirmation Order, in accordance with Section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtors may hold against any Person or Entity shall vest upon the Effective Date in the Post-Effective Date Debtors.

Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Post-Effective Date Debtors shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in accordance with the terms of the Plan and the Plan Administrator Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding Filed in one or more of the Chapter 11 Cases; provided, however, that the Williams Litigation shall be treated in accordance with the Surety Cooperation Agreement Order.

#### **(b) Reservation of Causes of Action.**

Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order or any Final Order, the Debtors, the Estates and the Post-Effective Date Debtors expressly reserve such Retained Cause of Action for later adjudication by the Post-Effective Date Debtors, including, without limitation, Retained Causes of Action of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or Confirmation Order, except where such Retained Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Post-Effective Date Debtors which agreement, by its terms, is not subject to Bankruptcy Court approval.

### **14. Bar Date Orders**

Nothing in the Plan extends or otherwise modifies a bar date established in the Bar Date Orders or other Final Order of the Bankruptcy Court.

### **15. Section 1146 Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtors pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

## **16. Conflicts with the Plan**

In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement and any other Order in these Chapter 11 Cases, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; provided, however, that (1) the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan and any of the foregoing documents and (2) except as to the Settlement Agreement and section 11.11 of the Plan, the Order Approving Litigation Funding and Cooperation Agreement shall control, and take precedence in the event of any inconsistency between the terms of the Plan and the terms of the Litigation Funding and Cooperation Agreement.

## **17. No Stay of Confirmation Order**

The Debtors will request that the Bankruptcy Court waive any stay of enforcement of the Confirmation Order otherwise applicable, including, without limitation, pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

### **O. The Plan Settlement**

(a) The Plan Settlement. Following good faith and arm's length negotiations, in exchange for the releases and other valuable consideration provided for in the Plan, the Debtors, the Committee and the Partner Settlement Parties (i.e., the Plan Settlement Parties) have agreed to the settlement provided for in the Plan Settlement Agreement and Indemnity Agreement annexed to the Plan as Exhibit A and fully incorporated as a material component of the Plan. The Plan Settlement and Indemnity Agreement each provide significant value to the Debtors and their Estates, favorably resolve and avoid potential protracted expensive and uncertain litigation, and enable the prompt and efficient wind-down of the Debtors' Estates through the Plan. The Plan Settlement is integral to the development and implementation of the Plan. The Plan, taken together with this Disclosure Statement, shall serve as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Holders of Claims and Interests and other parties in interest, and are fair, equitable, and reasonable.

(b) Plan Settlement Payment. Within ten (10) days of the Confirmation Order becoming a Final Order, the Partner Settlement Parties shall make the Plan Settlement Payment to the Debtors or the Post-Effective Date Debtors, as applicable.

**V. RISK FACTORS**

**A. Risk of Amendment, Waiver, Modification or Withdrawal of the Plan**

The Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable, reserve the right, in accordance with the Bankruptcy Code, the Bankruptcy Rules and consistent with the terms of the Plan, to amend the terms of the Plan or waive any conditions thereto if and to the extent that such amendments or waivers are necessary or desirable to consummate the Plan. The potential impact of any such amendment or waiver on the holders of Claims and Interests cannot presently be foreseen, but may include a change in the economic impact of the Plan on some or all of the proposed Classes or a change in the relative rights of such Classes.

**B. Parties May Object to the Plan's Classification of Claims and Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with this requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that parties will not object to the proposed classification.

**C. The Debtors May Not Be Able to Obtain Confirmation of the Plan**

The Debtors may not receive the requisite acceptances to confirm the Plan. In the event that votes with respect to Claims in the Class entitled to vote are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek Confirmation of the Plan by the Bankruptcy Court. However, if the requisite acceptances are not received, the Debtors may not be able to obtain Confirmation of the Plan. Even if the requisite acceptances of the Plan are received, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code has not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of liquidation would be on terms as favorable to Holders of Allowed Claims as the terms of the Plan. In addition, there can be no assurance that the Debtors will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtors' creditors.

**D. The Conditions Precedent to the Effective Date of the Plan May Not Occur**

As more fully set forth in the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

**E. General Unsecured Creditors May Recover Less Than Projected**

The Cash available for Distributions to Holders of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims may be reduced by, among other things, the prior payment of (a) the Plan Administrator Expenses; (b) any other wind-down fees, costs and expenses of the Debtors; and (c) Allowed Claims required to be paid by the Estates

pursuant to the Plan with priority over Allowed Surety Bond Claims, Allowed General Unsecured Claims, and Allowed Convenience Claims.

**F. The Allowed Amount of Claims May Differ from Current Estimates**

There can be no assurance that the estimated Allowed Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated in this Disclosure Statement. Furthermore, a number of additional claims may be Filed, including on account of rejection damages for executory contracts and unexpired leases rejected pursuant to the Plan. Any such claims may result in a greater amount of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims than estimated in the Disclosure Statement.

**G. Risks Related to Income Taxation**

There are several income tax considerations, risks and uncertainties associated with the Plan. Interested parties should read carefully the discussions set forth in Article VII of this Disclosure Statement regarding certain United States federal income tax consequences of the transactions proposed by the Plan.

**H. Litigation**

As is the case with most litigation, the outcomes of the Williams Litigation, the Schmid Litigation, the EPS Litigation or any other Retained Cause of Action commenced, or preserved, prior to the Effective Date, are difficult to assess or quantify. The Debtors seek recovery of very large or indeterminate amounts, and the magnitude of the potential loss or gain relating to such lawsuits may remain unknown for substantial periods of time. Thus, the results of the Williams Litigation, the Schmid Litigation, the EPS Litigation or any other Retained Cause of Action commenced, or preserved, prior to the Effective Date, may not be as the Debtors predict, estimate or assert in this Disclosure Statement.

**VI. CONFIRMATION OF THE PLAN**

**A. The Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

**The Bankruptcy Court has scheduled the Confirmation Hearing to commence on [●], 2020 at [●] a.m. (Eastern Time)**, before the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801. The Confirmation Hearing Notice, which sets forth the time, date and place of the Confirmation Hearing, has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the

Confirmation Hearing or in a notice of agenda for the Confirmation Hearing Filed with the Bankruptcy Court.

**Objections to Confirmation of the Plan must be Filed and served so that they are actually received by no later than 10/1, 2020 at 4:00 p.m. (Eastern Time). Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.**

**B. Requirements for Confirmation of the Plan**

Among the requirements for the Confirmation of the Plan is that the Plan: (a) is accepted by all Impaired Classes of Claims, or, if rejected by an Impaired Class of Claims, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Impaired Class of Claims; (b) is feasible; and (c) is in the “best interests” of Holders of Claims.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that: (a) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (b) the Debtors have complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (c) the Plan has been proposed in good faith. Specifically, the Debtors believe that the Plan satisfies or will satisfy the following applicable Confirmation requirements of section 1129 of the Bankruptcy Code, along with any other such requirements:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Each Holder of a Claim in an Impaired Class of Claims has either (1) accepted the Plan; or (2) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.
- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Tax Claims, Allowed Secured Claims and Allowed Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable or otherwise satisfied in accordance with the Plan.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.



- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

### C. Best Interests of Creditors

Often called the “best interests of creditors” test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (a) has accepted the plan or (b) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date.

Here, the costs of liquidation under chapter 7 of the Bankruptcy Code would include, among other things, the statutory fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, which amounts would, subject to the terms of the Cooperation Agreement, have to be paid before anything is paid to Holders of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims.

Conversion to chapter 7 of the Bankruptcy Code would also mean the establishment of a new claims bar date, which could result in, among other things, new Claims being asserted against the Estates, thereby diluting the recoveries of, among others, other Holders of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims.

Furthermore, any chapter 7 trustee could have to confront certain Asset allocation issues among the Debtors, as a chapter 7 trustee might need to allocate value among the individual Estates. This process could be time-consuming and costly, and reduce recoveries available for Holders of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims.

As more fully set forth in the hypothetical liquidation analysis (the “**Liquidation Analysis**”)<sup>21</sup> attached hereto as **Exhibit C**, the Debtors estimate that they will have approximately \$28.5 million of Cash available in the Debtors’ Estates upon the Effective Date. The Debtors believe that such amount will exceed the amount of expenses that will be incurred in implementing the Plan and winding up the affairs of the Debtors and their Estates, in accordance with the Plan and the Plan Administrator Agreement. After considering the effects that a chapter 7 liquidation would have on the funds available for distribution to Holders of Allowed Claims, including, among other things, fees payable to a chapter 7 trustee, the Debtors believe that Holders of Allowed Claims will receive not less than such Holders would receive if these Chapter 11 Cases were converted to a chapter 7 case.

---

<sup>21</sup> *The Liquidation Analysis was prepared by the Debtors in consultation with their professional advisors. Underlying the Liquidation Analysis are a number of estimates and assumptions that, although carefully developed and considered reasonable by the Debtors and their professional advisors, are inherently subject to significant economic uncertainties beyond such parties’ control. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change.*

In light of the foregoing, the Debtors believe that confirmation of the Plan will provide each Holder of an Allowed Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

#### **D. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, or any successor to the Debtors (unless such liquidation or reorganization is proposed in the plan). This requirement is satisfied as the Plan proposes a liquidation of the Debtors' Assets, and the Debtors believe the Debtors' Cash (and any additional proceeds from the liquidation of the Debtors' remaining Assets) will be sufficient to allow the Plan Administrator to make all payments required to be made under the Plan.

#### **E. Acceptance by Impaired Classes**

The Bankruptcy Code requires that, as a condition to confirmation, except as described in the following section, each class of claims or interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required.

A class is "impaired" unless a plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and more than one-half ( $\frac{1}{2}$ ) in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in dollar amount and a majority in number actually voting on the Plan cast their Ballots in favor of acceptance.

#### **F. Confirmation Without Acceptance by All Impaired Classes**

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan even if all impaired classes have not accepted it, if the plan has been accepted by at least one impaired class of claims, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cramdown," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the

Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

### **1. No Unfair Discrimination**

The “unfair discrimination” test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Debtors submit that the Plan does not “discriminate unfairly” against any rejecting Class.

### **2. Fair and Equitable Test**

The “fair and equitable” test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status *vis-à-vis* another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Debtors submit that the Plan meets the “fair and equitable” test.

### **G. Alternatives to Confirmation and Consummation of the Plan**

The Debtors believe that the Plan affords Holders of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims the potential for a greater recovery on the Debtors’ Assets than a chapter 7 liquidation, and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances of the Voting Classes of Claims are not received, or no Plan is confirmed and consummated, the theoretical alternatives to the Plan include (i) formulation of an alternative plan or plans of liquidation, or (ii) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

The Debtors believe that the Plan enables Holders of Allowed Surety Bond Claims, Allowed General Unsecured Claims and Allowed Convenience Claims to realize the greatest possible recovery under the circumstances, and, as compared to any alternative plan of liquidation, has the greatest chance of being confirmed and consummated.

These Chapter 11 Cases may also be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to complete the liquidation of the Debtors’ Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. As described above, the Debtors believe that the Plan will provide each Holder of an Allowed Surety Bond Claim, Allowed General Unsecured Claim and Allowed Convenience Claim with a greater recovery than such Holder would receive with respect to a liquidation of the Debtors’ Assets under chapter 7 of the Bankruptcy Code.

**VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

This discussion is provided for information purposes only, and is based on provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analyses set forth below with respect to the United States federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly, and adversely, affect the United States federal income tax consequences of the Plan.

The following summary is limited to Holders that are United States persons within the meaning of the IRC. For purposes of the following discussion, a “**United States person**” is any of the following:

- (i) An individual who is a citizen or resident of the United States;
- (ii) A corporation created or organized under the laws of the United States or any state or political subdivision thereof;
- (iii) An estate, the income of which is subject to federal income taxation regardless of its source; or
- (iv) A trust that (a) is subject to the primary supervision of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust, or (b) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

This discussion does not address all aspects of United States federal income taxation that may be relevant to a particular Holder in light of its particular facts and circumstances, or to certain types of Holders subject to special treatment under the IRC. Examples of Holders subject to special treatment under the IRC include, without limitation, governmental entities and entities exercising governmental authority, foreign companies, persons who are not citizens or residents of the United States, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, small business investment companies, regulated investment companies, persons that have a functional currency other than the United States dollar, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction. This discussion does not address the state, local or foreign tax consequences of the Plan with respect to any such Holders.

The tax treatment of Holders of Claims and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the Distributions provided for by the Plan may vary, depending upon the following factors, among others: (i) whether the Claim or portion thereof constitutes a Claim for principal or interest; (ii) the type of consideration, if any, received by the Holder in exchange for the Claim, and whether the Holder receives Distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to United States federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction or a worthless securities deduction with respect to the Claim or any portion thereof in the current or prior taxable years; (viii) whether the Holder has previously included in gross income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for United States federal income tax purposes; and (xi) whether the “market discount” rules apply to the Holder. Therefore, each Holder should consult such Holder’s own tax advisor for tax advice with respect to that Holder’s particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A significant amount of time may elapse between the date of the Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of the Disclosure Statement, such as new or additional tax legislation, court decisions, or administrative changes, could affect the United States federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. No representations are being made regarding the particular tax consequences of confirmation or implementation of the Plan as to any Holder of a Claim. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein.

**THE FOLLOWING DISCUSSION IS: (I) INTENDED ONLY AS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL; AND (II) FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN, AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT SUCH HOLDER’S TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.**

#### **A. Certain Tax Consequences to Holders of Claims**

A Holder of an Allowed Claim will generally recognize gain or loss equal to the difference between the Holder’s adjusted basis in its Allowed Claim and the amount realized by the Holder in respect of its Allowed Claim. Over time and on a cumulative basis, the amount realized generally will equal the aggregate amount of the Cash (and the fair market value of property, if any)

distributed to the Holder by the Plan Administrator, less the amount, if any, attributable to accrued but unpaid interest. A Holder of an Allowed Claim will generally recognize ordinary income to the extent that the amount of Cash or property received (or deemed received) under the Plan is attributable to interest that accrued on a Allowed Claim but was not previously paid by the Debtors or included in income by the Holder of the Allowed Claim.

The character of any gain or loss that is recognized as such will depend upon a number of factors, including the status of the Holder, the nature of the Allowed Claim in the Holder's hands, whether the Allowed Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Allowed Claim, and the Holder's holding period of the Allowed Claim. If the Allowed Claim in the Holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Holder held such Allowed Claim for longer than one year, or short-term capital gain or loss if the Holder held such Allowed Claim for one year or less. Any capital loss realized generally may be used by a corporate Holder only to offset capital gains, and by an individual Holder only to the extent of capital gains plus a certain limited statutorily proscribed amount of ordinary income in any single taxable year.

A Holder of an Allowed Claim who receives, in respect of the Holder's Allowed Claim, an amount that is less than that Holder's tax basis in such Allowed Claim may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction. A Holder that has previously recognized a loss or deduction in respect of that Holder's Allowed Claim may be required to include in gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Allowed Claim.

Holders of Allowed Claims who were not previously required to include any accrued but unpaid interest with respect to an Allowed Claim may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. A Holder previously required to include in gross income any accrued but unpaid interest with respect to an Allowed Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan.

A Holder of an Allowed Claim constituting an installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than at face value or distributed, transmitted, sold or otherwise disposed of within the meaning of IRC Section 453B.

Under backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder: (i) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact; or (ii) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under such rules

will be credited against the Holder's federal income tax liability. Holders of Allowed Claims may be required to establish an exemption from backup withholding or to make arrangements with regard to payment of any backup withholding.

Holders of Subordinated Claims and Claims that are not Allowed (“**Disallowed Claims**”) will not receive any Distribution as part of the Plan. Accordingly, because such a Holder may receive an amount that is less than that Holder's tax basis in such Claim, such Holder may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a bad debt deduction is claimed. Holders of Subordinated Claims and Disallowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction.

## **B. Certain Tax Consequences to the Debtors**

### *1. Federal Taxation Issues Related to Pass-Through Entities in General*

In general, for United States federal income tax law purposes, an entity can be taxable as a corporation or association, a partnership, or disregarded. The primary differences between corporations and partnerships for tax purposes are how an entity's items of income, gain, deduction and loss are taxed. Generally, corporations are treated as independent tax-paying entities, unaffected by the personal characteristics of the corporation's shareholders or changes in the composition of such shareholders as a result of transfers of stock from one or more shareholders to other existing or new shareholders. As separate taxpayers, corporations are liable for any tax on items of income and gain earned by such corporation and such taxable amounts are reduced by any deductions and losses available to the corporation. When amounts are distributed from a corporation to shareholders, the amount so distributed to the shareholders is taxable to the shareholders giving rise to double taxation, *i.e.*, once at the corporate level and again at the shareholder level. Partnerships, on the other hand, are not entities subject to income tax. Instead, partnerships are pass-through entities and items of income, gain, deduction and loss pass through to the partners. The partners are taxed on their allocable share of such items without regard to whether any income is actually distributed to such partners. Limited liability companies with more than one member are, by default, are taxable as partnerships unless an election to be taxed as a corporation is made. Certain entities, *e.g.*, single member limited liability companies, absent an election to be taxable as a corporation, are disregarded for tax purposes. Items of income, gain, loss and deduction of a disregarded entity are treated, for tax purposes, as if they are earned or incurred directly by the owner of the disregarded entity. Limited liability companies with more than one member and partnerships are permitted to elect to be taxed as corporations by making a so-called “check-the-box” election. If such a check-the-box election is made, the electing limited liability company or partnership is treated as a corporation for tax purposes, the entity is taxable on income and gain, and income of the entity is not taxable to the members or partners until such time as when distributions are made to such members or partners. The Partnership is taxable as a partnership. The Subsidiary is disregarded for tax purposes. All items of income, gain, deduction and loss of the Subsidiary are treated as if received or incurred by the Partnership and flow through to the partners of the Partnership in accordance with each partners allocable share.

## 2. *Cancellation of Indebtedness Income*

Under the IRC, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness income (“**COD Income**”) realized during the taxable year. Section 108 of the IRC provides an exception to this general rule, however, if the cancellation occurs in a case under the Bankruptcy Code or the taxpayer is insolvent at the time the COD Income arises. In the case of a pass-through entity the determination of insolvency is made at the partner level. For example, if an insolvent limited liability company that is taxable as a partnership realizes COD Income, a member of such insolvent limited liability company will be required to recognize and pay tax on that member’s allocable share of the limited liability company’s COD Income unless the member is itself insolvent.

Where COD Income is excluded from taxable income IRC Section 108 requires the amount of COD Income so excluded from gross income to be applied to reduce certain tax attributes of the taxpayer or, in the case of a pass-through entity, the owner of such entity if such owner is insolvent and permitted to exclude such COD Income from taxable income. The tax attributes of the taxpayer or, in the case of a pass-through entity, the owner of such entity, that may be subject to reduction include the net operating losses and net operating loss carryovers (collectively, “**NOLs**”), certain tax credits and tax credit carryovers, capital losses and capital loss carryovers, tax bases in assets and passive activity loss carryovers. Section 108 of the IRC further provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to a deduction.

Under the Plan, Holders of certain Allowed Claims are expected to receive less than full payment on their Claims, and Holders of Subordinated Claims and Disallowed Claims are expected to receive no payment. The Debtors’ liability to the Holders of such Claims in excess of the amount satisfied by Distributions under the Plan will be canceled, and therefore will result in COD Income to the Debtors. The owners of the equity interests in the Debtors will be required to recognize their respective allocable shares of COD Income of the Debtors unless such owners are themselves insolvent. If such owners are insolvent, the exclusion of the COD Income will result in a reduction of certain tax attributes, such as any NOLS, of an insolvent equity owner.

### **C. Certain Tax Consequences to Equity Owners**

Under the Plan, the general and limited partnership interests of the general and limited partners of the Partnership will be terminated and such general and limited partners will cease to be general and limited partners of the Partnership, and the Partnership will be dissolved. In connection with the dissolution of the Partnership and the termination of the partners’ interests therein, the partners will receive no distributions with respect to their partnership interests. In general, such partners will recognize loss to the extent of the excess of a partner’s adjusted basis in its partnership interest over the sum of (i) any money distributed (anticipated to be none) and (ii) the basis of the recipient partner in any unrealized receivables and inventory (again none are anticipated to be distributed). Other factors, including prior deductions made by a partner with respect to that partner’s partnership interest and a partner’s negative capital account, could affect the amount of income or loss a partner may be required to recognize as a result of the termination of such partner’s partnership interest in the Partnership. Accordingly, each partner is strongly encouraged to consult



with such partner's tax advisors to determine the tax consequences of the termination of that partner's partnership interest under the Plan.

**D. Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING DISCUSSION IS: (I) INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL; AND (II) FOR INFORMATIONAL PURPOSES ONLY, AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN, AND MAY VARY DEPENDING ON A CLAIM HOLDER'S OR INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, SUCH HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE TAX CONSEQUENCES OF THE PLAN.**

*[Signature Page Follows]*

**VIII. RECOMMENDATION**

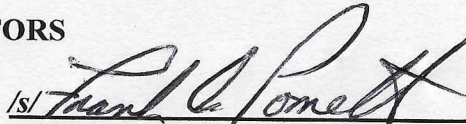
**IN THE OPINION OF THE DEBTORS, THE PLAN IS SUPERIOR AND PREFERABLE TO ANY ALTERNATIVE.**

**ACCORDINGLY, THE DEBTORS, AS THE PLAN PROPONENT, RECOMMEND THAT HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN AND SUPPORT CONFIRMATION OF THE PLAN.**

Dated: April 27, 2020

**DEBTORS**

**By:**



Name: Frank A. Pometti

Title: Chief Restructuring Officer

**EXHIBIT A TO DISCLOSURE STATEMENT**

**Chapter 11 Plan**

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

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

---

**AMENDED CHAPTER 11 PLAN OF  
WELDED CONSTRUCTION, L.P. AND WELDED CONSTRUCTION MICHIGAN, LLC**

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Sean M. Beach (No. 4070)

Matthew B. Lunn (No. 4119)

Robert F. Poppiti, Jr. (No. 5052)

Allison S. Mielke (No. 5934)

Betsy L. Feldman (No. 6410)

Rodney Square

1000 North King Street

Wilmington, DE 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

sbeach@ycst.com

mlunn@ycst.com

rpoppiti@ycst.com

amielke@ycst.com

bfeldman@ycst.com

*Counsel to the Debtors*

Dated: April 27, 2020

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552-0470.

**CHAPTER 11 PLAN OF  
WELDED CONSTRUCTION, L.P. AND WELDED CONSTRUCTION MICHIGAN, LLC**

**INTRODUCTION**<sup>2</sup>

The Debtors hereby propose this Plan, which provides for, among other things, the resolution of Claims and Interests against the Debtors. Reference is made to the Disclosure Statement for, among other things, (i) a discussion of the Debtors' history, business and properties; (ii) a summary and analysis of this Plan, including the compromises and settlements provided for in this Plan; and (iii) certain related matters, including certain risk factors relating to the consummation of this Plan and Distributions to be made under this Plan. In addition, this Plan provides for and implements the Plan Settlement as embodied in the Plan Settlement Agreement and attached Indemnity Agreement, a copy of which is attached as **Exhibit A** to this Plan, by and between the Plan Settlement Parties. Pursuant to the Plan Settlement, the Plan Settlement Parties have agreed to, among other things, resolve any and all disputes between the Debtors, the Committee and the Partner Settlement Parties in exchange for (i) the Plan Settlement Payment; (ii) waiver of any and all claims against the Debtors and the Estates by the Partner Settlement Parties; (iii) mutual releases as provided for in this Plan; and (iv) indemnification by the Partner Settlement Parties with respect to the Central States Claim and related litigation, as set forth in the Indemnity Agreement. This Plan serves as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, the Estates, Holders of Claims, and other parties in interest, and are fair, equitable, and reasonable.

The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code.

These Chapter 11 Cases are being jointly administered pursuant to an order [D.I. 33] of the Bankruptcy Court. Under Section 5.2 of this Plan, for purposes of voting and Distributions in connection with this Plan, the Debtors will be substantively consolidated for Plan purposes only, meaning that all of the Assets and liabilities of the Debtors will be deemed to be the Assets and liabilities of Welded Construction, L.P. for purposes of voting to accept or reject this Plan, and for Distributions. As a result, the votes to accept or reject this Plan by Holders of Claims against a particular Debtor shall be tabulated as votes to accept or reject this Plan for the substantively consolidated Debtors. The Debtors reserve the right to make appropriate modifications of this Plan if and to the extent necessary to effectuate confirmation of this Plan. Except as otherwise provided in this Plan, each of the Debtors shall continue to maintain its separate corporate existence after the Effective Date for purposes other than the treatment of Claims and Distributions under this Plan.

All Holders of Claims who are entitled to vote on this Plan are encouraged to read this Plan and the Disclosure Statement, and the respective exhibits attached thereto, in their entirety before

---

<sup>2</sup> Capitalized terms not defined in this Introduction shall have the meanings ascribed to them in this Plan.

voting to accept or reject this Plan and making any elections in connection with this Plan with respect to Convenience Claims and releases under Section 11.11(b) of this Plan, as applicable. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and Section 11.5 of this Plan, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith, have been approved for use in soliciting acceptances and rejections of this Plan. Nothing in this Plan should be construed as constituting a solicitation of acceptances of this Plan unless and until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Holders of Claims to the extent required by section 1125 of the Bankruptcy Code.

**THE DEBTORS BELIEVE THAT THIS PLAN IS IN THE BEST INTERESTS OF CREDITORS AND THE ESTATES, AND ENCOURAGE ALL PARTIES TO VOTE TO ACCEPT THE PLAN.**

**THE COMMITTEE AND FEDERAL INSURANCE COMPANY SUPPORT THIS PLAN, AND ENCOURAGE ALL PARTIES ENTITLED TO VOTE TO ACCEPT THE PLAN.**

## ARTICLE I

### DEFINED TERMS AND RULES OF INTERPRETATION

For purposes of this Plan, except as expressly provided or unless the context otherwise requires:

(a) all capitalized terms used in this Plan and not otherwise defined in this Plan, the Bankruptcy Code or the Bankruptcy Rules, shall have the meanings ascribed to them in this Article I of this Plan;

(b) any capitalized term used in this Plan that is not defined in this Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;

(c) whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine;

(d) any reference in this Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified or supplemented from time to time;

(e) unless otherwise specified, all references in this Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules and exhibits of or to this Plan;

(f) the words “herein,” “hereof,” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan;

(g) captions and headings to articles and sections are inserted for convenience of reference only, and are not intended to be a part of or to affect the interpretation of this Plan; and

(h) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

The capitalized terms used in this Plan shall have following meanings:

**1.1 Administrative Claim:** A Claim (other than a Professional Fee Claim, but, for the avoidance of doubt, including Ordinary Course Professional Fee Claims) arising under sections 365, 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, to the extent not previously paid, otherwise satisfied or withdrawn, including, but not limited to, fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code and Section 503(b)(9) Claims.

**1.2 Administrative and Priority Claims Reserve:** The reserve of Cash funded by the Post-Effective Date Debtors and maintained by the Plan Administrator in an account for the benefit of Holders of Allowed Unclassified Claims (exclusive of Holders of Professional Fee Claims, the reserve for which Holders shall be the Professional Fee Reserve), Allowed Secured Claims and Allowed Priority Claims in an amount equal to the Administrative and Priority Claims Estimate.

**1.3 Administrative and Priority Claims Estimate:** As of the Effective Date, the estimated amount determined by the Debtors in consultation with the Committee, exclusive of Professional Fee Claims, of all unpaid Claims that will be Allowed Unclassified Claims, Allowed Secured Claims and Allowed Priority Claims.

**1.4 Allowed:** With respect to any Claim, except as otherwise provided herein: (a) a Claim that has been scheduled by the Debtors on their Schedules as other than disputed, contingent or unliquidated and as to which no contrary proof of claim has been filed; (b) a Claim that is set forth in a timely filed proof of claim as to which no objection has been filed on or before the Claim Objection Deadline, and which is not otherwise a Disputed Claim; (c) a Claim that has been allowed by a Final Order; (d) a Claim that is allowed: (i) in any stipulation executed by the Debtors prior to the Effective Date and approved by the Bankruptcy Court; (ii) in any stipulation executed by the Post-Effective Date Debtors on or after the Effective Date; or (iii) in any contract, instrument, indenture or other agreement entered into or assumed by Debtors in connection with and in accordance with this Plan; or (e) a Claim that is allowed pursuant to the terms of this Plan.

**1.5 Allowed Claim, or Allowed [ ] Claim:** A Claim that has been Allowed.

**1.6 Assets:** Any and all right, title and interest of the Debtors and their Estates in and to property of whatever type or nature, including, and without limitation, any proceeds thereof, the Retained Causes of Action, the Debtors' books and records, the Plan Settlement Payment, and the other benefits and rights of the Debtors and the Estates under the Plan Settlement.

**1.7 Avoidance Actions:** Any and all avoidance or equitable subordination or recovery actions under sections 105(a), 502(d), 510, 542 through 551 and 553 of, and otherwise under, the Bankruptcy Code or any similar federal, state or common law causes of action, including, without limitation, Preference Actions.

**1.8 Ballot:** The ballot form distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

**1.9 Bankruptcy Code:** Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as may be amended).

**1.10 Bankruptcy Court:** The United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over any Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over such Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

**1.11 Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure (as may be amended).

**1.12 Bar Date Orders:** (i) That certain order of the Bankruptcy Court entered on January 10, 2019 [D.I. 403] establishing (1) February 28, 2019 at 5:00 p.m. (Eastern Time) as the date by which each Person or Entity, other than governmental units, must file a proof of claim based on claims against the Debtors that arose prior to the Petition Date, including requests for allowance and payment of Section 503(b)(9) Claims; and (2) April 22, 2019, at 5:00 p.m. (prevailing Eastern Time), as the deadline by which any Governmental Unit (as such term is defined in section 101(27) of the Bankruptcy Code) must file proofs of claim against the Debtors; (ii) that certain order of the



Bankruptcy Court entered on March 11, 2019 [D.I. 554] establishing April 30, 2019, at 5:00 p.m. (Eastern Time), as the date by which each Person or Entity asserting an Administrative Claim (except for Section 503(b)(9) Claims), which claim arose during the period from the Petition Date through and including March 31, 2019, must file a request for allowance of such claim; and (iii) that certain order of the Bankruptcy Court entered on September 5, 2019 [D.I. 978] establishing the date that is ten (10) days after the date that the Bankruptcy Court enters an order approving the Disclosure Statement as the date by which Federal Insurance Company must file a Section 503(b)(9) Claim, if any.

**1.13 Bechtel GP:** Ohio Welded Company, LLC and its predecessors.

**1.14 Bechtel LP:** Bechtel Oil, Gas & Chemicals, Inc. and its predecessors.

**1.15 Bonded Contracts:** Any and all construction contracts to which the Debtors are a party and for which Federal Insurance Company, or any of its affiliated sureties, has issued a surety bond for the benefit of such contract counterparties.

**1.16 Business Day:** Any day, excluding Saturdays, Sundays or “legal holidays” (as defined in Bankruptcy Rule 9006(a)(6)) on which commercial banks are open for business in Wilmington, Delaware.

**1.17 Cash:** Cash and cash equivalents in certified or immediately available U.S. funds, including but not limited to bank deposits, checks and similar items.

**1.18 Causes of Action:** Includes, without limitation, any and all of the Debtors’ actions, causes of action, Avoidance Actions, controversies, liabilities, obligations, rights, suits, damages, judgments, Claims and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, whether assertible by the Debtors directly, indirectly, derivatively or in any representative or other capacity, now existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act, failure to act, error, omission, transaction, occurrence or other event arising or occurring prior to or after the Petition Date.

**1.19 Central States Claim:** Proof of claim number 534 filed by Central States, Southeast and Southwest Areas Pension Fund alleging complete withdrawal liability under the Employee Retirement Income Security Act of 1974.

**1.20 Central States Claim Estimation:** The estimation for reserve and distribution purposes of the Central States Claim, as set forth in Section 8.4.1 of this Plan.

**1.21 Chapter 11 Cases:** The voluntary chapter 11 bankruptcy cases commenced by the Debtors, which are being jointly administered under case caption *Welded Construction, L.P., et al.*, Case No. 18-12378 (CSS).

**1.22 Claim:** A claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtors or the Estates whether or not asserted or Allowed, whether or not arising before or after the Effective Date.

**1.23 Claim Objection Deadline:** The date that is one hundred and eighty (180) days after the Effective Date, subject to extension as set forth in Section 8.2 of this Plan.

**1.24 Class:** A category of Claims or Interests designated pursuant to this Plan.

**1.25 Collateral:** Any property or interest in property of a Debtor's Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

**1.26 Confirmation:** Entry by the Bankruptcy Court of the Confirmation Order.

**1.27 Confirmation Date:** The date upon which the Confirmation Order is entered by the Bankruptcy Court.

**1.28 Confirmation Hearing:** Collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of this Plan, as such hearing or hearings may be continued from time to time.

**1.29 Confirmation Order:** The Order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

**1.30 Convenience Claim:** Any Claim that would otherwise be classified as a General Unsecured Claim but, with respect to such Claim, (i) the aggregate amount of such Claim is equal to or less than \$100,000; or (ii) the aggregate amount of such Claim is greater than \$100,000, and the Holder of such Claim makes an election on its Ballot, or otherwise in writing to the Debtors within thirty (30) days of such Claim being Allowed, to reduce its Claim to \$100,000 and receive the treatment provided to Convenience Claims under this Plan.

**1.31 Convenience Claim Reserve:** The reserve of Cash funded by the Debtors and maintained by the Plan Administrator in an escrow account for the benefit of Holders of Allowed Convenience Claims in an amount equal to the Convenience Claims Estimate.

**1.32 Convenience Claims Estimate:** As of the Effective Date, the amount estimated by the Debtors in consultation with the Committee, to be distributed on account of all unpaid Convenience Claims that will be Allowed Convenience Claims.

**1.33 Creditor:** Any Holder of a Claim.

**1.34 Committee:** The Official Committee of Unsecured Creditors appointed by the U.S. Trustee in these Chapter 11 Cases, as it may be reconstituted from time to time.

**1.35 Debtor or Debtors:** Individually and collectively, Welded Construction, L.P. and Welded Construction Michigan, LLC.

**1.36 Disclosure Statement:** The *Amended Disclosure Statement for the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC*, dated as of April 27, 2020, and all exhibits thereto, as the same may be amended, modified or supplemented.

**1.37 Disclosure Statement Order:** The Final Order of the Bankruptcy Court [D.I. ●] approving the Disclosure Statement as containing adequate information, pursuant to section 1125(a) of the Bankruptcy Code, and authorizing the Debtors to solicit acceptances of this Plan.

**1.38 Disputed Claim:** Any Claim: (i) listed on the Schedules as unliquidated, disputed or contingent, unless a proof of claim has been Filed in a liquidated and non-contingent amount; (ii) included in a proof of claim as to which an objection or request for estimation has been filed, or as to which the Debtors or the Post-Effective Date Debtors, as applicable, or other parties in interest in accordance with applicable law retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, this Plan and the Confirmation Order; or (iii) which is otherwise disputed by Debtors or the Post-Effective Date Debtors, as applicable, in accordance with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtors, the Estates or the Post-Effective Date Debtors on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order.

**1.39 Disputed Claims Reserve:** The reserve established and maintained by the Plan Administrator, pursuant to and in accordance with the terms of the Plan Administrator Agreement for the payment of Disputed General Unsecured Claims that become Allowed Claims after the Effective Date. The Disputed Claims Reserve need not be maintained by the Plan Administrator in a segregated account.

**1.40 Distribution:** The transfer of Cash or other property by the Post-Effective Date Debtors under this Plan to the Holders of Allowed Claims.

**1.41 Effective Date:** The date that is the first Business Day on which each condition set forth in Article IX of this Plan has been satisfied or waived as set forth therein.

**1.42 Entity:** Shall have the meaning set forth in section 101(15) of the Bankruptcy Code. Unless otherwise specified herein, any reference to an Entity as a Holder of a Claim or Interest includes such Entity's successors, assigns and affiliates.

**1.43 Estates:** The chapter 11 estates of the Debtors created pursuant to section 541 of the Bankruptcy Code.

**1.44 Estates' Share:** The Williams Litigation Proceeds allocable to the Estates in accordance with the Surety Cooperation Agreement Order.

**1.45 Exculpated Parties:** Each of, solely in their capacities as such, and solely in connection with Section 11.12 of this Plan: (a) the Debtors, the Estates and the Post-Effective Date Debtors; (b) the Debtors' officers, general partners (Bechtel GP and McCaig LP), limited partners (Bechtel LP and McCaig LP) and managers; (c) the Professionals retained by the Debtors pursuant to an Order of the Bankruptcy Court, including Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable); (d) the Committee; (e) the present and former members of the Committee, but solely in their capacity as members of the Committee (including ex officio members); and (f) the Professionals retained by the Committee pursuant to an Order of the Bankruptcy Court.

**1.46 File, Filed or Filing:** File, filed or filing with the Bankruptcy Court or its authorized designee in these Chapter 11 Cases.

**1.47 Face Amount:** When used in reference to an Allowed Claim, the amount of such Claim that is Allowed, and, when used in reference to a Disputed Claim, (a) the liquidated amount set forth in the proof of claim or request for payment relating to the Disputed Claim (if any); (b) an amount agreed to by the Post-Effective Date Debtors and the Holder of the Disputed Claim; or (c) if a request for estimation is Filed with respect to such Disputed Claim, the amount at which such Disputed Claim is estimated by the Bankruptcy Court.

**1.48 Final Decree:** The Order entered pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1 closing a Chapter 11 Case.

**1.49 Final Order:** An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that is not subject to stay or appeal, and for which the applicable time within which to take such action has expired, or for which such actions has been adjudicated by the highest court with jurisdiction over the matter.

**1.50 First Administrative Claim Bar Date:** April 30, 2019 at 5:00 p.m. (Eastern Time), which is the deadline set pursuant to the *Order (I) Establishing Bar Dates for Filing Administrative Expense Claims, Other Than 503(b)(9) Claims, and (II) Approving the Form and Manner of Notice Thereof* [D.I. 554] for filing requests for Administrative Claims, other than Section 503(b)(9) Claims, arising on or after the Petition Date through and including March 31, 2019.

**1.51 General Unsecured Claim:** Any unsecured, non-priority Claim against the Debtors or the Estates that is not a Surety Bond Claim, a Convenience Claim or a Subordinated Claim.

**1.52 General Unsecured Claim Distribution:** The aggregate amount of Cash or proceeds realized from the Assets of the Debtors' Estates, including, without limitation, the proceeds from the recovery of any Retained Causes of Action (inclusive of the Estates' Share, but excluding the Surety Bond Share), available for Distribution Pro Rata to holders of Allowed General Unsecured Claims, after the payment, or appropriate reserves have been established, in full satisfaction of wind-down costs, Allowed Unclassified Claims, Allowed Secured Claims and Allowed Priority Claims.

**1.53 GP Interests:** The general partnership interests of Bechtel GP and McCaig GP in Welded Construction, L.P., as set forth in the Partnership Agreement.

**1.54 Holder:** The Person that is the owner of record of a Claim or Interest, as applicable.

**1.55 Impaired:** Any Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.56 Indemnity Agreement:** That certain Indemnity Agreement, dated on or about April \_\_\_\_, 2020, by and between Bechtel Global Corporation and Debtor Welded Construction, L.P., which is attached to and made an integral part of the Plan Settlement Agreement, which agreement provides certain indemnification to the Debtors and the Post-Effective Date Debtors on the terms and conditions provided for therein.

**1.57 Initial Distribution:** The Distributions made to Holders of Allowed Claims as soon as practicable after the Effective Date in accordance with the terms of this Plan.

**1.58 Insurance Contract:** All insurance policies that have been issued at any time to or provide coverage to any of the Debtors and all agreements, documents or instruments relating thereto.

**1.59 Insured Claim:** Any Claim or portion of a Claim (other than a Claim held by (1) a Holder of a Surety Bond Claim; or (2) an employee of the Debtors for workers' compensation coverage under the workers' compensation program applicable in the particular state in which the employee is employed by the Debtors) that is insured under any Insurance Contract, but only to the extent of such coverage.

**1.60 Insurer:** Any company or other entity that issued an Insurance Contract, any third party administrator, and any respective predecessors and/or affiliates thereof.

**1.61 Interests:** All previously issued and outstanding limited liability company membership interests, partnership units or other interests in the Debtors outstanding immediately prior to the Effective Date, including, without limitation, treasury stock and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to convert, exchange, exercise for or otherwise receive such limited liability company membership interests, partnership units or other interests, except for the GP Interests and the LP Interests.

**1.62 Intercompany Claim:** Any Claim, of whatever nature and arising at whatever time, held by one Debtor against another Debtor.

**1.63 Litigation Funding Reimbursement:** The reimbursement of the funds advanced for prosecution of the Williams Litigation to the Surety and the Estates (if applicable) from the Williams Litigation Proceeds in accordance with the Surety Cooperation Agreement Order.

**1.64 Lien:** Any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage or hypothecation to secure payment of a debt or performance of an obligation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

**1.65 Local Rules:** The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

**1.66 LP Act:** Delaware Revised Uniform Limited Partnership Act.

**1.67 LP Interests:** The limited partnership interests of Bechtel LP and McCaig LP in Welded Construction, L.P., as set forth in the Partnership Agreement.

**1.68 McCaig GP:** McCaig Welded GP, LLC.

**1.69 McCaig LP:** McCaig US Holdings, Inc.

**1.70 Order:** An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any of these Chapter 11 Cases or the docket of any other court of competent jurisdiction.

**1.71 Ordinary Course Professional:** Any OCP, as that term is defined in that certain *Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date* [D.I. 231].

**1.72 Ordinary Course Professional Fee Claim:** A Claim of an Ordinary Course Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through and including the Effective Date.

**1.73 Partner Settlement Parties:** Bechtel GP, Bechtel LP, Bechtel Corporation, Bechtel Global Corporation, Bechtel Oil, Gas and Chemicals, Inc., Bechtel Equipment Operation Inc., Bechtel Power Corporation, McCaig GP, and McCaig LP and each of their respective non-Debtor Related Parties.

**1.74 Partnership:** Welded Construction, L.P.

**1.75 Partnership Agreement:** That certain *Second Amended and Restated Limited Partnership Agreement of Welded Construction, L.P.*, dated December 1, 2015, as amended, modified or supplemented from time to time in accordance with its terms.

**1.76 Person:** An individual or Entity, limited liability company, corporation, partnership, association, trust or unincorporated organization, joint venture or other person or a government or any agency or political subdivision thereof.

**1.77 Petition Date:** October 22, 2018, the date on which the Debtors Filed their voluntary chapter 11 petitions for relief in the Bankruptcy Court.

**1.78 Plan:** This *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC*, dated as of April 27, 2020, and all exhibits thereto, including, without limitation, the Plan Settlement Agreement, and any Plan Supplement, as the same may be amended, modified or supplemented.

**1.79 Plan Administrator:** Such person or entity designated by the Committee, in consultation with the Debtors and Federal Insurance Company, prior to the Confirmation Date and approved by the Bankruptcy Court pursuant to the Confirmation Order to (a) administer this Plan in accordance with its terms and the Plan Administrator Agreement; (b) to be the sole officer and/or responsible Person for the Debtors and Post-Effective Date Debtors from and after the Effective Date; and (c) take such other actions as may be authorized under this Plan and the Plan Administrator Agreement, and any successor thereto. In addition, the Plan Administrator shall be deemed to be the Liquidating Trustee under the Delaware Revised Uniform Limited Partnership Act (6 Del. C. Sections 17–101, *et seq.*).

**1.80 Plan Administrator Agreement:** The agreement by and among the Debtors, the Post-Effective Date Debtors and the Plan Administrator specifying the rights, duties and responsibilities of the Plan Administrator under this Plan.

**1.81 Plan Administrator Professionals:** The agents, financial advisors, attorneys, consultants, independent contractors, representatives and other professionals of the Plan Administrator or the Post-Effective Date Debtors (in each case, solely in their capacities as such).

**1.82 Plan Administrator Professional Fees:** The reasonable fees and expenses of the Plan Administrator Professionals employed by the Plan Administrator.

**1.83 Plan Oversight Committee:** The Holders of General Unsecured Claims or Surety Bond Claims appointed by the Committee and Federal Insurance Company, in consultation with the Debtors, as set forth in Section 5.6 of this Plan and identified in the Plan Administrator Agreement, which shall have the authority set forth in the Plan and the Plan Administrator Agreement.

**1.84 Plan Oversight Committee Chairperson:** Federal Insurance Company.

**1.85 Plan Oversight Committee Members:** The members of the Plan Oversight Committee appointed pursuant to this Plan and the Confirmation Order, solely in their capacities as such.

**1.86 Plan Settlement or Plan Settlement Agreement:** That certain Settlement Agreement, dated on or about April \_\_, 2020, by and between the Plan Settlement Parties, which is incorporated herein and annexed hereto as **Exhibit A**, which agreement resolves various disputes, provides valuable consideration to the Debtors and the Estates, including the indemnification rights set forth in the Indemnity Agreement, and grants certain releases on the terms and conditions provided for therein.

**1.87 Plan Settlement Parties:** The Debtors, the Committee and the Partner Settlement Parties.

**1.88 Plan Settlement Payment:** The \$2,000,000 Cash payment from the Partner Settlement Parties in accordance with the terms of the Plan Settlement Agreement.

**1.89 Plan Supplement:** The ancillary documents necessary to the implementation and effectuation of this Plan, including the Plan Administrator Agreement, which shall be Filed on or before the date that is seven (7) days prior to the Voting Deadline.

**1.90 Post-Effective Date Debtors:** The Debtors, on and after the Effective Date.

**1.91 Preference Actions:** Any and all avoidance or recovery actions under section 547 of, and otherwise under, the Bankruptcy Code or any similar federal, state or common law causes of action not otherwise waived or released under this Plan, the Confirmation Order, or any other Final Order.

**1.92 Priority Claim:** A Claim that is entitled to priority under section 507(a) of the Bankruptcy Code, other than an Administrative Claim and a Priority Tax Claim.

**1.93 Priority Tax Claim:** A Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code.

**1.94 Professional:** Any professional (other than an Ordinary Course Professional) employed in the Chapter 11 Cases pursuant to sections 327, 328, 1103 or 1104 of the Bankruptcy Code or any professional or other Person (in each case, other than an Ordinary Course Professional) seeking

compensation or reimbursement of expenses in connection with these Chapter 11 Cases pursuant to section 503(b)(3) or 503(b)(4) of the Bankruptcy Code.

**1.95 Professional Fee Claim:** A Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through and including the Effective Date.

**1.96 Professional Fee Reserve:** The reserve established and funded by the Debtors, in consultation with the Committee, pursuant to Section 11.2 of this Plan.

**1.97 Pro Rata:** The proportion that the Allowed Claim in a particular Class bears to the aggregate amount of (a) Allowed Claims in such Class as of the date of determination, plus (b) Disputed Claims in such Class as of the date of determination, in their aggregate Face Amounts or such other amount: (i) as calculated by the Post-Effective Date Debtors on or before the date of any such Distribution; (ii) as determined by an Order of the Bankruptcy Court estimating such Disputed Claim; or (iii) as directed by a Final Order of the Bankruptcy Court.

**1.98 Rejection Claim:** Any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to this Plan and the Confirmation Order.

**1.99 Related Parties:** With respect to any Person or Entity, such Person's or Entity's current and former (i) officers, (ii) managers, (iii) directors, (iv) employees, (v) lenders, (vi) partners, (vii) affiliates, (iv) professionals, (v) advisors, (vi) agents, (vii) members, (viii) shareholders, and (ix) other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the successors, assigns or heirs of such Person or Entity.

**1.100 Released Parties:** Each solely in their capacities as such, (a) the Debtors and their Estates; (b) the Debtors' current and former officers and managers; (c) the Partner Settlement Parties; and (d) to the extent not included in the foregoing, each of the preceding entities' respective Related Parties.

**1.101 Release Opt-Out:** The item set forth in the Ballots, due by the Voting Deadline, pursuant to which Holders of Claims in Classes 4 and 5 that vote to accept or reject this Plan may opt out of the releases set forth in Section 11.11(b) of this Plan.

**1.102 Releasing Parties:** (a) all Holders of Claims deemed hereunder to have accepted this Plan (i.e., Holders of Claims in Unimpaired Classes of Claims) that have not Filed an objection to the release in Section 11.11(b) of this Plan prior to the deadline to object to Confirmation of this Plan; and (b) all Holders of Claims in Classes 4 and 5 that (i) vote to accept or reject this Plan and do not timely submit a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.11(b) of this Plan, or (ii) do not vote to accept or reject this Plan, and either do not timely submit a Release Opt-Out, or do not File an objection to the releases in Section 11.11(b) of this Plan prior to the deadline to object to Confirmation of this Plan.

**1.103 Retained Causes of Action:** All rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, Causes of Action, and rights to collect damages of the Debtors against third parties, including, without limitation: (a) the Williams Litigation; (b) Schmid



Pipeline Construction, Inc. and its Related Parties; (c) Columbia Gas Transmission, LLC and its Related Parties; (d) Earth Pipeline Services, Inc. and its Related Parties; (e) all litigation, arbitration or other types of adversarial or dispute resolution proceeding disclosed on the Debtors' Schedules and the Debtors' *Statements of Financial Affairs*; and (f) all litigation, arbitration or other types of adversarial or dispute resolution proceedings arising in law, equity or pursuant to any other theory of law and all other rights (including, without limitation, defenses, cross-claims and counter-claims), regardless of whether they (or the facts underlying them) were disclosed in the Debtors' Schedules, their *Statements of Financial Affairs* or otherwise during these Chapter 11 Cases, against or related to any party that (i) owed to the Debtors or their Estates (or any of them) a fiduciary, contractual or statutory duty, whether imposed by law or in equity; (ii) committed a tort or other unlawful or actionable conduct against or related to the Debtors or their Estates (or any of them); and (iii) received a payment, obligation or other consideration from the Debtors or their Estates (or any of them) that may be avoided under chapter 5 of the Bankruptcy Code and other similar state law claims and causes of action, but excluding all rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, and rights to collect damages of the Debtors against third parties released or waived under this Plan, the Confirmation Order or any Final Order, including, without limitation, pursuant to the Plan Settlement.

**1.104 Schedules:** The Schedules of Assets and Liabilities Filed by the Debtors, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009.

**1.105 Section 503(b)(9) Claim:** A Claim that is entitled to priority under section 503(b)(9) of the Bankruptcy Code.

**1.106 Secured Claim:** A Claim that is (i) secured by a valid, perfected and enforceable Lien on property in which the Debtors or the Estates have an interest that is not subject to avoidance, or (ii) subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in such property or to the extent of the amount subject to setoff, as applicable, all as determined pursuant to sections 506(a) and 1111(b) of the Bankruptcy Code and other applicable law.

**1.107 Subordinated Claim:** Any Claim or Interest that is subordinated to Surety Bond Claims, Convenience Claims and General Unsecured Claims pursuant to section 510 of the Bankruptcy Code or Final Order of the Bankruptcy Court.

**1.108 Subsidiary:** Welded Construction Michigan, LLC.

**1.109 Surety Bond Claim:** Claims scheduled in the Schedules for, or asserted against the Debtors by, Federal Insurance Company on the basis of the Debtors' indemnification obligations or the like under a surety bond other than claims that are entitled to treatment as Administrative Claims or Priority Claims.

**1.110 Surety Bond Share:** The Williams Litigation Proceeds allocable to the Allowed Surety Bond Claim in accordance with the Surety Cooperation Agreement Order.

**1.111 Surety Cooperation Agreement Order:** That certain *Order Approving Litigation Funding and Cooperation Agreement* [D.I. 745], annexed hereto as **Exhibit B**.

**1.112 Unimpaired:** Any Class of Claims that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

**1.113 Unclassified Claims:** Any Administrative Claims, Professional Fee Claims and Priority Tax Claims.

**1.114 U.S. Trustee:** The Office of the United States Trustee for the District of Delaware.

**1.115 Voting Deadline:** The date and time by which all Ballots to accept or reject this Plan must be received to be counted as set by the Disclosure Statement Order.

**1.116 Williams Litigation:** That certain litigation styled as *Welded Construction, L.P. v. Williams Co., Inc., et al.*, Adv. Pro. 19-50194 (CSS).

**1.117 Williams Litigation Proceeds:** Any recovery by the Estates resulting from a judgment in or settlement of the Williams Litigation.

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

**2.1 Unclassified Claims.** Holders of the following Claims are not entitled to vote on this Plan:

1. *Administrative Claims*
2. *Professional Fee Claims*
3. *Priority Tax Claims*

**2.2 Unimpaired Classes of Claims.** Holders of Claims in the following Unimpaired Classes of Claims are deemed to have accepted this Plan and, therefore, are not entitled to vote on this Plan:

1. *Secured Claims (Class 1)*
2. *Priority Claims (Class 2)*

**2.3 Impaired/Voting Class of Claims.** Holders of Claims in the following Impaired Class of Claims are entitled to vote on this Plan:

1. *Surety Bond Claims (Class 3)*
2. *General Unsecured Claims (Class 4)*
3. *Convenience Claims (Class 5)*

**2.4 Impaired/Non-Voting Classes of Claims and Interests.** Holders of Claims and Interests in the following Impaired Classes of Claims and Interests are deemed to have rejected this Plan and, therefore, are not entitled to vote on this Plan:

1. *Subordinated Claims (Class 6)*
2. *Interests (Class 7)*

### **ARTICLE III**

#### **TREATMENT OF CLAIMS AND INTERESTS**

##### **3.1 Unclassified Claims.**

**3.1.1 Administrative Claims.** Except as otherwise provided for herein, the Confirmation Order, or separate order of the Bankruptcy Court, on, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing.

**3.1.2 Professional Fee Claims.** Professional Fee Claims shall be paid by the Post-Effective Date Debtors as set forth in Section 11.2 of this Plan.

**3.1.3 Priority Tax Claims.** In full satisfaction of such Claims, Holders of Allowed Priority Tax Claims shall be paid by the Post-Effective Date Debtors, at the Post-Effective Date Debtors' discretion, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs; and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Post-Effective Date Debtors shall have agreed upon in writing.

##### **3.2 Unimpaired Classes of Claims.**

**3.2.1 Class 1: Secured Claims.** On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive from the Post-Effective Date Debtors, at the discretion of the Post-Effective Date Debtors, in full satisfaction of such Allowed Secured Claim, (i) Cash equal to the value of such Claim; (ii) the return of the Holder's Collateral securing such Claim; (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (iv) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing.

*Class 1 is Unimpaired, and therefore Holders of Secured Claims are conclusively presumed to have accepted this Plan.*

**3.2.2 Class 2: Priority Claims.** On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of such Allowed Priority Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Priority Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim; or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. *Class 2 is Unimpaired, and therefore Holders of Priority Claims are conclusively presumed to have accepted this Plan.*

### **3.3 Impaired/Voting Classes of Claims.**

**3.3.1 Class 3: Surety Bond Claims.** On, or as soon as reasonably practicable after, the Effective Date, the Holder of any Allowed Surety Bond Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed Surety Bond Claim, (i) the Surety Bond Share and its Pro Rata share of the General Unsecured Claim Distribution (i.e. Pro Rata on a combined dollar for dollar basis with the Holders of Allowed Class 4 Claims); or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. *Class 3 is Impaired, and therefore Holders of Surety Bond Claims are entitled to vote on this Plan.*

**3.3.2 Class 4: General Unsecured Claims.** On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed General Unsecured Claim shall receive from the Post-Effective Date Debtors, in full satisfaction of such Allowed General Unsecured Claim, (i) its Pro Rata share of the General Unsecured Claim Distribution (i.e. Pro Rata on a combined dollar for dollar basis with the Holder of the Allowed Class 3 Claim), or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtors shall have agreed upon in writing. *Class 4 is Impaired, and therefore Holders of General Unsecured Claims are entitled to vote on this Plan.*

**3.3.3 Class 5: Convenience Claims.** On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Convenience Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Convenience Claim, Cash equal to 50% of the amount of such Allowed Convenience Claim, up to a maximum recovery of \$50,000. *Class 5 is Impaired, and therefore Holders of Convenience Claims are entitled to vote on this Plan.*

### **3.4 Impaired/Non-Voting Classes of Claims and Interests.**

**3.4.1 Class 6: Subordinated Claims.** On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under this Plan on account of such Subordinated Claims. *Class 6 is deemed to have rejected this Plan, and therefore Holders of Subordinated Claims are not entitled to vote on this Plan.*

**3.4.2 Class 7: Interests.** As of the Effective Date, all Interests of any kind, including, without limitation, the GP Interests and LP Interests, shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or consideration under this Plan on account of such Interests. *Class 7 is deemed to have rejected this Plan, and therefore Holders of Interests are not entitled to vote on this Plan.*

**3.5 Special Provisions Regarding Insurance.** Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers Bankruptcy Court jurisdiction, or requires a party to opt out of any releases):

(a) subject to Section 3.5(e) below, on the Effective Date, the Insurance Contracts shall vest, unaltered and in their entirety with the Post-Effective Date Debtors, and all debts, obligations, and liabilities of the Debtors (and, after the Effective Date, of the Post-Effective Date Debtors) thereunder, whether arising before or after the Effective Date, shall survive and shall not be amended, modified, waived, released, discharged or impaired in any respect, all such debts, obligations, and liabilities of the Debtors (and, after the Effective Date, of the Post-Effective Date Debtors) shall be satisfied by the Post-Effective Date Debtors in the ordinary course of business, and the Insurers shall not need to or be required to file or serve any objection to a proposed cure amount or a request, application, Claim, proof or motion for payment or allowance of any Claim or Administrative Claim and shall not be subject to any bar date or similar deadline governing cure amounts, proofs of Claim or Administrative Claims;

(b) for the avoidance of doubt, subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.10 of this Plan, if there is available insurance, any party with rights against or under the applicable Insurance Contract, including, without limitation, the Estates, the Post-Effective Date Debtors and Holders of Insured Claims, may pursue such rights, and the Post-Effective Date Debtors may, but shall not be required to, move to limit an Insured Claim to the Face Amount of such Insured Claim less the total coverage available with respect to that Insured Claim under the Insurance Contracts; provided, however, that doing so in no way obligates an Insurer to pay any portion of the Insured Claim or otherwise alters an Insurer's coverage defenses; provided further, however, that, subject to Section 3.5(e) below, nothing alters or modifies the duty, if any, that Insurers have to pay Insured Claims covered by the Insurance Contracts and the Insurers' right to seek payment or reimbursement from the Debtors (or after the Effective Date, the Post-Effective Date Debtors); provided finally, however, the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article XI of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (I) all current and former employees of the Debtors to proceed with any valid workers compensation claims they might have in the appropriate judicial or administrative forum; (II) direct action claims against an Insurer under applicable non-bankruptcy law to proceed with their claims; (III) the Insurers to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (A) any valid workers compensation claims, (B) claims where a claimant asserts a direct claim against any Insurer under applicable non-bankruptcy law, or an order has been entered by the Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its Insured Claim, and (C) all costs in

relation to each of the foregoing; and (IV) the Insurers to cancel any Insurance Contracts, to the extent permissible under applicable non-bankruptcy and bankruptcy law, and in accordance with the terms of the Insurance Contracts (other than on the basis of any outstanding pre-petition claims against the Debtors, their Estates or the Post-Effective Date Debtors arising from or related to such Insurance Contracts);

(c) nothing in this Section 3.5 shall constitute a waiver of any causes of action the Debtors, their Estates or the Post-Effective Date Debtors may hold against any Entity, including any Insurers. Nothing in this Section 3.5 is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a recovery from any Insurer in addition to (but not in duplication of) any Distribution such Holder may receive under this Plan; provided, however, that the Debtors, their Estates, and the Post-Effective Date Debtors do not waive, and expressly reserve their rights to assert that the proceeds of the Insurance Contracts are an Asset and property of the Estates to which they are entitled to the extent that the Debtors are entitled to assert first-party claims pursuant to the terms and conditions of the applicable Insurance Contract;

(d) subject to Section 3.5(e) below, nothing shall modify the scope of, or alter in any other way, the rights and obligations of the Insurers, the Debtors (or, after the Effective Date, the Post-Effective Date Debtors), or any other individual or entity, as applicable, under the Insurance Contracts, and all such rights and obligations shall be determined under the Insurance Contracts and applicable non-bankruptcy law as if the Chapter 11 Cases had not occurred, and, for the avoidance of doubt, the Insurers shall retain any and all rights, claims and defenses to liability and/or coverage that they have under the Insurance Contracts, including the right to contest and/or litigate with any party, including the Debtors and the Post-Effective Date Debtors, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable Insurance Contract; and

(e) any payment, pecuniary, reimbursement or other financial or monetary obligations of the Debtors, their Estates or the Post-Effective Date Debtors owing to the Insurers under the Insurance Contracts, including, but not limited to, reimbursement for payments within a deductible, shall be satisfied solely from existing collateral and/or security, if any, held by the Insurers in the ordinary course and pursuant to the terms of the Insurance Contracts, and to the extent that any such collateral and/or security is insufficient to satisfy any such obligations, the Insurers shall have no recourse to the Debtors, their Estates or the Post-Effective Date Debtors, and hereby waive any and all claims against, and rights to a Distribution from, the Debtors, their Estates and the Post-Effective Date Debtors.

**3.6 Provision Governing Allowance and Defenses to Claims.** On and after the Effective Date, the Post-Effective Date Debtors shall have all of the Debtors' and the Estates' rights under section 558 of the Bankruptcy Code. Nothing under this Plan shall affect the rights and defenses of the Debtors, the Estates and the Post-Effective Date Debtors in respect of any Claim not Allowed by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs or recoupment against such Claims. The Post-Effective Date Debtors may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estates or the Post-Effective Date Debtors may have against the Claim Holder, including, without

limitation, Avoidance Actions and Preference Actions, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Post-Effective Date Debtors of any such Claim it may have against such Claim Holder. The Post-Effective Date Debtors may (i) designate any Claim as Allowed at any time from and after the Effective Date and (ii) may designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

#### **ARTICLE IV**

##### **ACCEPTANCE OR REJECTION OF THIS PLAN**

**4.1 Impaired Class of Claims Entitled to Vote.** Only the votes of Holders of Claims in Classes 3, 4 and 5 shall be solicited with respect to this Plan.

**4.2 Acceptance by an Impaired Class.** In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class shall have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and more than one-half ( $\frac{1}{2}$ ) in number of the Claims allowed for purposes of Plan voting pursuant to the Disclosure Statement Order that have timely and properly voted to accept or reject the Plan.

**4.3 Presumed Acceptances by Unimpaired Classes.** Class 1 and Class 2 are Unimpaired under this Plan. *Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted this Plan, and therefore the votes of the Holders of such Claims shall not be solicited.*

**4.4 Impaired Classes Deemed to Reject Plan.** Holders of Subordinated Claims and Interests in Class 6 and Class 7 are not entitled to receive or retain any property or interests in property under this Plan. *Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected this Plan, and therefore the votes of such Holders shall not be solicited.*

**4.5 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.** Because at least one Impaired Class is deemed to have rejected this Plan, the Debtors will request Confirmation of this Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

**4.6 Elimination of Vacant Classes.** Any Class of Claims that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of a Claim allowed for purposes of Plan voting pursuant to the Disclosure Statement Order shall be deemed eliminated from this Plan for purposes of determining acceptance of this Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

## ARTICLE V

### **IMPLEMENTATION OF THIS PLAN AND THE PLAN ADMINISTRATOR**

**5.1 Implementation of this Plan.** This Plan will be implemented by, among other things, the approval of the Plan Settlement Agreement and Indemnity Agreement, the appointment of the Plan Administrator, the formation of the Plan Oversight Committee, and the making of Distributions from the Assets, including, without limitation, all Cash, the Plan Settlement Payment, and the proceeds, if any, from the Retained Causes of Action, by the Post-Effective Date Debtors in accordance with this Plan and the Plan Administrator Agreement.

Except as otherwise provided in this Plan, on and after the Effective Date, all Assets of the Estates, including all claims, rights, Retained Causes of Action and any property acquired by the Debtors under or in connection with this Plan, including as a result of the Plan Settlement, shall vest in the Post-Effective Date Debtor Welded Construction, L.P., free and clear of all Claims, Liens, charges, other encumbrances and Interests subject to the substantive consolidation provided for herein.

**5.2 Substantive Consolidation for Plan Purposes Only.** Except as otherwise provided in this Plan, each Debtor shall continue to maintain its separate corporate existence after the Effective Date for all purposes, other than the treatment of Claims and Distributions under this Plan. Except as expressly provided in this Plan (or as otherwise ordered by the Bankruptcy Court), on the Effective Date for purposes of voting to accept or reject this Plan and Distributions: (i) the Assets and liabilities of the Debtors shall be deemed merged or treated as though they were merged into and with the Assets and liabilities of Debtor Welded Construction, L.P.; (ii) all guaranties of the Debtors of the obligations of any other Debtor shall be deemed eliminated and extinguished so that any Claim against any Debtor, and any guarantee thereof executed by any Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of Debtor Welded Construction, L.P.; (iii) each and every Claim filed or to be filed in either of the Chapter 11 Cases shall be treated as filed against the consolidated Debtors and shall be treated as one Claim against and obligation of Welded Construction, L.P.; (iv) all Intercompany Claims shall be eliminated and extinguished, and holders of Intercompany Claims shall not receive any Distributions or retain any property pursuant to this Plan on account of such Intercompany Claims; and (v) for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one entity, Welded Construction, L.P., so that, subject to the other provisions of section 553 of the Bankruptcy Code, debts due to any of the Debtors may be set off against the debts of any of the other Debtors. Such substantive consolidation shall not (other than for purposes relating to this Plan) affect the legal and corporate structures of the Post-Effective Date Debtors. Moreover, such substantive consolidation shall not affect any subordination provisions set forth in any agreement relating to any Claim or Interest or the ability of the Post-Effective Date Debtors to seek to have any Claim or Interest subordinated in accordance with any contractual rights or equitable principles. Notwithstanding anything in this section to the contrary, all post-Effective Date fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, if any, shall be calculated on a separate legal entity basis for each Post-Effective Date Debtor.



### **5.3 The Debtors' Post-Effective Date Corporate Affairs.**

**5.3.1 Debtors' Officers and Managers.** On the Effective Date, each of the Debtors' officers and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

### **5.4 Dissolution and Cancellation of the Debtors.**

(a) Welded Construction Michigan, LLC. On the Effective Date, the Plan Administrator will be appointed to manage the Subsidiary in consultation with the Plan Oversight Committee, in accordance with this Plan and the Plan Administrator Agreement. Following the implementation of this Plan, the administration and distribution of the Debtors' Assets in accordance with the terms of this Plan, and the winding down of the Subsidiary's affairs, without the need for any further order or action of the Bankruptcy Court, the Subsidiary will be dissolved and its affairs will be wound up in accordance with Michigan law. The Plan Administrator is authorized to take, in consultation with the Plan Oversight Committee, all actions reasonably necessary to dissolve the Subsidiary, and neither the Plan Administrator nor the Post-Effective Date Debtors shall be required to pay any taxes or fees in order to cause such dissolution and termination of the Subsidiary's existence. As the Partnership is the sole member of the Subsidiary, the interest in the Subsidiary is an asset in the Partnership's Estate.

(b) Welded Construction, L.P. On the Effective Date, pursuant to this Plan, all of the Interests in the Partnership, including, without limitation, all of the GP Interests and the LP Interests, are deemed automatically canceled, in exchange for no consideration to the Holders thereof. Upon such cancellation, the Partnership will have no general partners and no limited partners. As a consequence, the Partnership will thereupon automatically dissolve pursuant to section 17-801(4) of the LP Act.

Notwithstanding the dissolution of the Partnership, it will continue to exist as a separate legal entity, pursuant to section 17-201(b) of the LP Act, until the filing with the Delaware Secretary of State of a Certificate of Cancellation canceling the Partnership's Certificate of Limited Partnership (which filing is not subject to any statutory deadline). During the period between the Partnership's dissolution and the filing of the Certificate of Cancellation, the Partnership's business and affairs will be wound up under sections 17-803(b) and 17-804 of the LP Act. Subject to the terms of this Plan, such winding up may involve, among other things, prosecuting suits by and defending suits against the Partnership; settling and closing the Partnership's business, if any; liquidating, disposing of, and conveying the Partnership's property; paying, discharging or making reasonable provision for the Partnership's liabilities; and taking all actions permitted under this Plan. The winding up will be carried out by or under the direction of the Plan Administrator in consultation with the Plan Oversight Committee. The Plan Administrator will be the Liquidating trustee of the Partnership as provided in sections 17-803 and 17-804 of the LP Act.

When the Plan Administrator shall have implemented this Plan, administered and distributed the Debtors' Assets in accordance with the terms of this Plan, and otherwise completed winding up the business and affairs of the Partnership, the Plan Administrator shall, in consultation with the Plan Oversight Committee, cause the Partnership's Certificate of Limited Partnership to

be canceled under section 17-203(a) of the LP Act by filing a Certificate of Cancellation with the Delaware Secretary of State. The Plan Administrator is authorized to take, after consultation with the Plan Oversight Committee, all actions reasonably necessary to cause such cancellation, and neither the Plan Administrator nor the Post-Effective Date Debtors shall be required to pay any taxes or fees in order to cause such cancellation. Regardless of when such winding up is completed, under no circumstances will such Certificate of Cancellation be filed before the Subsidiary shall have been dissolved and its affairs completely wound up.

## **5.5 Plan Administrator.**

**5.5.1 Appointment; Duties.** Not less than ten (10) days prior to the commencement of the Confirmation Hearing and subject to Bankruptcy Court approval in connection with Confirmation of this Plan, the Committee, in consultation with the Debtors and Federal Insurance Company, shall designate the Person who initially will serve as the Plan Administrator.

### **5.5.2 Plan Administrator Agreement.**

(a) Plan Administrator as a Fiduciary. The Plan Administrator shall be a fiduciary of each of the Debtors' Estates and the Post-Effective Date Debtors, and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administrator Agreement.

(b) Provisions of the Plan Administrator Agreement and Confirmation Order. The Plan Administrator Agreement and the Confirmation Order shall provide that: (i) the Plan Administrator shall have no duties until the occurrence of the Effective Date, and on and after the Effective Date shall be a fiduciary of each of the Post-Effective Date Debtors and the Estates; (ii) if this Plan is withdrawn or otherwise abandoned prior to the occurrence of the Effective Date, the Plan Administrator position shall thereafter be dissolved; (iii) on and after the Effective Date, the Plan Administrator shall perform the functions of a Liquidating trustee of the Partnership as provided in sections 17-803 and 17-804 of the LP Act; and (iv) the Plan Administrator shall be subject to the terms of the Surety Cooperation Agreement Order.

### **5.5.3 Powers and Duties of Plan Administrator.**

(a) General Powers and Duties. From and after the Effective Date, pursuant to the terms and provisions of this Plan and the Plan Administrator Agreement, the Plan Administrator shall, in consultation with the Plan Oversight Committee, be empowered and directed to: (i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Plan Administrator under this Plan or the Plan Administrator Agreement; (ii) comply with this Plan and the obligations hereunder; (iii) employ, retain or replace professionals to represent him or her with respect to his or her responsibilities; (iv) object to Claims as provided in this Plan, and prosecute such objections; (v) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim; (vi) establish, replenish or release any reserves as provided in this Plan, as applicable; (vii) exercise such other powers as may be vested in the Plan Administrator pursuant to this Plan, the Plan Administrator Agreement or any other order of the Bankruptcy Court, including the Confirmation Order, or otherwise act on behalf of and for the Debtors and the Post-Effective Date Debtors from and after the Effective Date; (viii) file applicable tax returns for any

of the Debtors; (ix) liquidate any of the Assets; and (x) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action, subject to the terms of the Surety Cooperation Agreement Order. The Plan Administrator may, without the need for further Court approval, retain legal counsel and financial advisors to advise him or her in the performance of his or her duties, which counsel and advisors may be counsel and advisors for the Debtors and the Committee.

(b) Distributions. Pursuant to the terms and provisions of this Plan and the Plan Administrator Agreement, the Plan Administrator shall make the required Distributions specified under this Plan and in accordance with this Plan.

(c) Reserves. On the Effective Date, the Plan Administrator shall establish reserves as required by this Plan or as otherwise determined to be appropriate in his or her sole discretion.

**5.5.4 Compensation of the Plan Administrator**. The Estates and the Post-Effective Date Debtors shall pay the undisputed reasonable fees and expenses of the Plan Administrator and the Plan Administrator Professionals. If a party disputes the reasonableness of any such invoice and such dispute is not resolved by agreement, the Plan Administrator or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved. The undisputed portion of such reasonable fees and expenses shall be paid as provided herein. The Plan Administrator shall provide summary invoices to the Plan Oversight Committee prior to payment of any such invoice.

**5.5.5 Indemnification of the Plan Administrator, the Plan Oversight Committee, and Related Parties**. The Debtors and the Post-Effective Date Debtors shall indemnify and hold harmless: (i) the Plan Administrator (solely in his or her capacity as such); (ii) the Plan Administrator Professionals; and (iii) the Plan Oversight Committee and Plan Oversight Committee Members (solely in their capacities as such) (collectively, the “**Indemnified Parties**”), with respect to any and all liabilities, losses, damages, claims, costs and expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such actions or omissions, taken in connection with this Plan, the Plan Administrator Agreement and the Confirmation Order, other than acts or omissions, or consequences of such post-Effective Date actions or omissions, resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud) or gross negligence. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (i) any payment on account of such claim shall be paid solely from the Estates and (ii) the legal fees and related costs incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estates or any insurance. The indemnification provisions of the Plan Administrator Agreement shall remain available to and be binding upon any former Plan Administrator or the estate of any decedent of the Plan Administrator and shall survive the termination of the Plan Administrator Agreement.

**5.5.6 Insurance**. The Plan Administrator shall be authorized to obtain and pay for, out of the funds of the Estates, all reasonably necessary insurance coverage for him or herself, his or her agents, representatives, employees or independent contractors and the Debtors, including, but not

limited to, coverage with respect to: (i) any property that is or may in the future become the property of the Debtors or their Estates; and (ii) the liabilities, duties and obligations of the Plan Administrator and his or her agents, representatives, employees or independent contractors under the Plan Administrator Agreement, the latter of which insurance coverage may remain in effect for a reasonable period of time as determined by the Plan Administrator after the termination of the Plan Administrator Agreement.

**5.5.7 Preservation of Retained Causes of Action.** Except as expressly set forth in this Plan or the Confirmation Order, the Post-Effective Date Debtors shall retain all Retained Causes of Action and nothing contained in this Plan or the Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Retained Causes of Action. Subject to the provisions relating to Preference Actions below, the Post-Effective Date Debtors or the Plan Administrator, as applicable, shall have, retain, reserve and be entitled to assert all such Retained Causes of Action as fully as if these Chapter 11 Cases had not been commenced, and all of the Post-Effective Date Debtors' legal and equitable rights respecting any Claim that are not specifically waived or relinquished by this Plan, the Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date to the same extent as if these Chapter 11 Cases had not been commenced. Solely to the extent that the Plan Oversight Committee Chairperson, individually and on its own behalf and sole discretion, consents, the Plan Administrator may pursue and/or litigate one or more Preference Actions, and upon such conditions as the Plan Oversight Committee Chairperson determines appropriate upon consultation with the Plan Oversight Committee as to the potential benefits such Preference Action(s) may bring after conducting an appropriate cost-benefit analysis (including weighing the potential impact upon Holders of any Surety Bond Claims) against the benefit to the Estates. For the avoidance of doubt, the Plan Administrator is authorized to pursue Preference Actions under conditions required by the Plan Oversight Committee Chairperson if, in the Plan Administrator's business judgment, the pursuit of such Preference Actions under such required conditions is expected to result in a net benefit to the creditors.

## **5.6 Plan Oversight Committee.**

**5.6.1 Creation of the Plan Oversight Committee.** On or before ten (10) days prior to the commencement of the Confirmation Hearing and subject to Bankruptcy Court approval in connection with Confirmation of this Plan, the Committee, in consultation with the Debtors, may appoint up to two (2) Plan Oversight Committee Members, and the designated Plan Oversight Committee Chairperson, in consultation with the Debtors, may appoint up to one (1) Plan Oversight Committee Member. Each Plan Oversight Committee Member shall be authorized to act in accordance with this Plan and the Plan Administrator Agreement. Plan Oversight Committee Members shall serve without compensation and shall be entitled to reimbursement of actual, reasonable expenses incurred in the course of discharging their responsibilities as Plan Oversight Committee Members if such expenses have been approved by the Plan Administrator prior to being incurred. For the avoidance of doubt, Plan Oversight Committee Members shall not be entitled to reimbursement of fees and expenses of such Plan Oversight Committee Members' legal counsel or other professional advisors.

**5.6.2 Standing of the Plan Oversight Committee.** The Plan Oversight Committee shall have independent standing to appear and be heard in the Bankruptcy Court as to any matter relating to

this Plan, the Plan Administrator Agreement, the Estates or the Post-Effective Date Debtors, including any matter as to which the Bankruptcy Court has retained jurisdiction pursuant to Article X of this Plan.

**5.6.3 Function and Duration of the Plan Oversight Committee.** The Plan Oversight Committee shall have the rights and responsibilities set forth in the Plan and the Plan Administrator Agreement, including instructing and supervising the Plan Administrator with respect to its responsibilities under this Plan and the Plan Administrator Agreement. The Plan Oversight Committee shall remain in existence until such time as the final Distributions under the Plan have been made.

**5.6.4 Recusal of Plan Oversight Committee Members.** A Plan Oversight Committee member shall recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Plan Administrator with respect to the Claims, Retained Causes of Action or rights of such Plan Oversight Committee Member, the entity appointing such Plan Oversight Committee Member, or any affiliate of the foregoing.

## **5.7 Funding of Reserves.**

**5.7.1 Professional Fee Reserve.** On the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve as set forth in Section 11.2 of the Plan.

**5.7.2 Administrative and Priority Claims Reserve.** On the Effective Date, the Plan Administrator shall set aside Cash in the amount of the Administrative and Priority Claims Estimate, which Cash shall be used by the Post-Effective Date Debtors to fund the Administrative Claims Reserve. The Cash so transferred shall not be used for any purpose other than to pay Unclassified Claims (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve), Secured Claims and Priority Claims. The Plan Administrator (i) shall segregate in an account and shall not commingle the Cash held in the Administrative and Priority Claims Reserve and (ii) subject to the terms and conditions of the Plan and the Plan Administrator Agreement, shall, in accordance with this Plan, pay each Unclassified Claim (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve), Secured Claim and Priority Claim, on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After all Unclassified Claims (except Professional Fee Claims), Secured Claims and Priority Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Plan Administrator, any remaining Cash in the Administrative and Priority Claims Reserve shall first be applied to pay any outstanding Allowed Professional Fee Claims and any remaining amounts shall be returned by the Plan Administrator to the Post-Effective Date Debtors for further distribution in accordance with this Plan.

**5.7.3 Other Reserves.** The Plan Administrator shall use Cash to establish and administer any other necessary reserves that may be required to effectuate this Plan and the Distributions to Holders of Allowed Claims hereunder or Plan Administrator Agreement, including the Disputed Claims Reserve and the Convenience Claims Reserve.

## **ARTICLE VI**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**6.1 Executory Contracts and Unexpired Leases.** Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date, other than the Plan Settlement Agreement, the Indemnity Agreement, the Litigation Funding and Cooperation Agreement and the Insurance Contracts, including, without limitation, those identified in the Plan Supplement. For the avoidance of doubt, any post-petition consulting agreements shall not be deemed rejected as of the Effective Date. *Any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, at the address below, within thirty-five (35) days of the Effective Date, and shall also serve such proof of claim upon the Plan Administrator.*

Welded Construction Claims Processing Center  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

**6.2 Rejection Claims.** Any Rejection Claims arising from this Plan that are not timely Filed pursuant to Section 6.1 of this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of this Plan, the Post-Effective Date Debtors may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

## **ARTICLE VII**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

**7.1 Interest on Claims.** Except to the extent provided in section 506(b) of the Bankruptcy Code, this Plan or the Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

**7.2 Distributions by Post-Effective Date Debtors.** The Plan Administrator or its designee, on behalf of the Post-Effective Date Debtors, shall serve as the disbursing agent under this Plan with respect to Distributions to Holders of Allowed Claims (provided that the Post-Effective Date Debtors may hire professionals or consultants to assist with making Distributions). The Post-Effective Date Debtors shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to this Plan, the Confirmation Order and the Plan Administrator Agreement. The Post-Effective Date Debtors shall not be required to give any bond or surety or other security for the performance of the Plan Administrator's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

**7.3 Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the initial distribution date by the Post-Effective Date Debtors. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of this Plan and the Plan Administrator Agreement. No Distribution shall be made on account of, without limitation, any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of claim has not been timely filed; or (iii) is evidenced by a proof of claim that has been amended by a subsequently filed proof of claim.

**7.4 Means of Cash Payment.**

(a) Cash payments under this Plan shall be made, at the option, and in the sole discretion, of the Post-Effective Date Debtors, by wire, check or such other method as the Post-Effective Date Debtors deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Post-Effective Date Debtors, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to this Plan in the form of checks issued by the Post-Effective Date Debtors shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof. Requests for reissuance of any check within ninety days (90) of the date of the issuance thereof shall be made directly to the Post-Effective Date Debtors.

(b) For purposes of effectuating Distributions under this Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

**7.5 Fractional Distributions.** Notwithstanding anything in this Plan to the contrary, no payment of fractional cents shall be made pursuant to this Plan. Whenever any payment of a fraction of a cent under this Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

**7.6 De Minimis Distributions.** Notwithstanding anything to the contrary contained in this Plan, the Post-Effective Date Debtors shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against the Estates.

**7.7 Delivery of Distributions.** All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in these Chapter 11 Cases (subject to, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Post-Effective Date Debtors) or, in the absence of a filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Post-Effective Date Debtors shall use reasonable efforts to determine such Holder's then-current address, but shall have no affirmative obligation to locate such current address. If the Post-Effective Date

Debtors cannot determine, or is not notified of, a Holder's then-current address within ninety (90) days after the Effective Date, the Distribution reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Post-Effective Date Debtors a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in this Plan shall require the Post-Effective Date Debtors to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Post-Effective Date Debtors shall be held in trust on behalf of the Holder of the Allowed Claim to which they are payable by the Post-Effective Date Debtors until the earlier of the date that such undeliverable Distributions are claimed by such Holder and ninety (90) days after the date the undeliverable Distributions were made. The Post-Effective Date Debtors shall have no obligation to recognize the sale or transfer of any Claim that occurs after the Confirmation Date.

**7.8 Withholding, Payment and Reporting Requirements with Respect to Distributions.**

All Distributions under this Plan shall, to the extent applicable, comply with all tax withholding, payment and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment and reporting requirements. The Post-Effective Date Debtors shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment and reporting requirements. The Post-Effective Date Debtors may require, in the Post-Effective Date Debtors' sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Post-Effective Date Debtors the appropriate Form W-8 or Form W-9, as applicable, to each Holder. Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Estates in connection with such Distribution; and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements reasonably satisfactory to the Post-Effective Date Debtors for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Estates in connection with such Distribution.

**7.9 Setoffs.** The Post-Effective Date Debtors may, but shall not be required to, set off against any Claim, any payments, Retained Causes of Actions or other Distributions to be made by the Post-Effective Date Debtors pursuant to this Plan in respect of such Claim, any claims of any nature whatsoever that the Debtors or the Estates may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Estates or the Post-Effective Date Debtors of any such claim that it may have against such Holder, provided further, that if the Post-Effective Date Debtors set off any Avoidance Action or Retained Cause of Action against the recovery to any Holder of a Claim pursuant to this Section 7.9, the Post-Effective Date Debtors shall not be deemed to have impaired, estopped, waived, or released any rights to prosecute the same such Avoidance Action or Retained Cause of Action against any other Person or Entity.



**7.10 No Distribution in Excess of Allowed Amounts.** Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

**7.11 Allocation of Distributions.** All Distributions received under this Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

**7.12 Forfeiture of Distributions.** If the Holder of an Allowed Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a) of this Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7, or fails to complete and return to the Post-Effective Date Debtors the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the written request by the Post-Effective Date Debtors for the completion and return to it of the appropriate form pursuant to Section 7.8, then such Holder shall be deemed to have forfeited its right to any Distributions from the Estates (or the proceeds thereof) and the Post-Effective Date Debtors. The forfeited Distributions shall become unrestricted Assets, and shall be redistributed to Holders of Allowed Claims in accordance with the terms of this Plan after reserving as necessary for payment of expenses of the Plan Administrator and otherwise in compliance with this Plan and the Plan Administrator Agreement. In the event the Post-Effective Date Debtors determine, in the Post-Effective Date Debtors' sole discretion, that any such amounts are too small in total to economically redistribute to the Holders of Allowed Claims, the Post-Effective Date Debtors may instead donate such amounts to a charitable organization(s), free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

## **ARTICLE VIII**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO**

**8.1 Claims Administration Responsibility.** Except as otherwise specifically provided in this Plan and the Plan Administrator Agreement, after the Effective Date, the Post-Effective Date Debtors shall have the authority (a) to file, withdraw or litigate to judgment objections to Claims; (b) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; (c) to amend the Schedules in accordance with the Bankruptcy Code; and (d) to administer and adjust the claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. Any agreement entered into by the Post-Effective Date Debtors (acting in accordance with the terms of the Plan Administrator Agreement) with respect to the allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

**8.2 Claim Objections.** All objections to Claims (other than (i) Administrative Claims and (ii) Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of this Plan) shall be Filed by the Post-Effective Date Debtors on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Post-Effective Date Debtors on or before the Claim Objection Deadline with notice only to those parties entitled to notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the filing of

such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a final order is entered by the Bankruptcy Court. In the event that such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the then-current Claim Objection Deadline (as previously extended, if applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claim Objection Deadline.

**8.3 No Distributions Pending Allowance.** Notwithstanding any other provision of this Plan or the Plan Administrator Agreement, no payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by a Final Order, and the Disputed Claim has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors or the Post-Effective Date Debtors on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

**8.4 Estimation of Contingent or Unliquidated Claims.** The Post-Effective Date Debtors may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the Claims objection, estimation and resolution procedures in Section 8 are cumulative and are not necessarily exclusive of one another.

**8.4.1 Central States Claim Estimation.** Pursuant to sections 105(a), 502(c), and 1142(b) of the Bankruptcy Code and in accordance with Section 8.4, the Central States Claim shall be estimated at \$0.00 solely for purposes of determining the General Unsecured Claim Distribution and any related reserve. The Central States Claim estimation is properly estimated at \$0.00 solely for distribution and reserve purposes to avoid undue delay in the administration of these Chapter 11 Cases and is supported by, without limitation, the indemnity contained in the Plan Settlement Agreement. The rights of all parties with respect to the allowance, liquidation or determination of liability with respect the Central States Claim are preserved, including, without limitation, all rights to object to or otherwise oppose the Central States Claim for any reason in the Bankruptcy Court and any other court or tribunal of competent jurisdiction, including any arbitration proceedings.

**8.5 Amendments to Claims.** On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Post-Effective Date Debtors and any such new or amended Claim filed without prior authorization shall be deemed disallowed in full and expunged without any further action. Any Claims filed after the applicable deadlines in the Bar Date Orders or this Plan shall be automatically deemed disallowed in full and expunged without further action.

**ARTICLE IX**

**CONDITIONS PRECEDENT TO THE OCCURRENCE OF THE EFFECTIVE DATE**

**9.1 Conditions to Confirmation.** The following are conditions precedent to confirmation of the Plan, each of which must be satisfied or waived in accordance with Section 9.3 of this Plan:

(i) the provisions of the Confirmation Order that relate to the Plan Settlement Agreement and the Indemnity Agreement shall be in form and substance reasonably acceptable to the Debtors, the Partner Settlement Parties and the Committee and shall, among other things:

(A) provide that the Debtors are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created under or in connection with the Plan; and

(B) provide that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall be immediately effective, subject to the terms and conditions of the Plan; and the Confirmation Order shall have been entered by the Bankruptcy Court.

(ii) each of the Plan Settlement Agreement and Indemnity Agreement shall be signed by all parties and in a form acceptable to the Debtors and Committee.

**9.2 Conditions to the Occurrence of the Effective Date.** The occurrence of the Effective Date shall not occur and this Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.3 of this Plan:

(i) the Bankruptcy Court shall have entered the Confirmation Order;

(ii) the Confirmation Order shall not be subject to any stay;

(iii) the Plan Administrator Agreement shall have been executed, and a Plan Administrator and Plan Oversight Committee shall have been appointed;

(iv) the Professional Fee Reserve shall be funded in Cash pursuant to and in accordance with Sections 5.7 and 11.2 of this Plan in an amount agreed to by the Debtors and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court; and

(v) all actions, documents, and agreements necessary to implement the provisions of this Plan to be effectuated on or prior to the Effective Date shall be reasonably satisfactory to the Debtors and the Committee, and such actions, documents, and agreements shall be effective or executed and delivered.

**9.3 Waiver of Conditions to the Occurrence of the Effective Date.** The conditions to the Effective Date set forth in Section 9.2 of this Plan may be waived in writing by mutual written agreement, including by electronic mail, of the Debtors and the Committee at any time without further Order.

**9.4 Effect of Non-Occurrence of Conditions to the Effective Date.** If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.2 and 9.3 of this Plan, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to this Section 9.4 of this Plan, (i) this Plan shall be null and void in all respects; and (ii) nothing contained in this Plan shall (a) constitute a waiver or release of any Claims or any Interests, or (b) prejudice in any manner the rights of the Debtors, the Estates or any other Person or Entity.

## **ARTICLE X**

### **RETENTION OF JURISDICTION**

**10.1 Scope of Retained Jurisdiction.** Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, these Chapter 11 Cases and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim not otherwise Allowed under this Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of this Plan and any agreement or order of the Bankruptcy Court with respect to a sale of the Debtors' Assets prior to the Effective Date and enforce remedies upon any default under this Plan and any such sale agreement or order;

(e) hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters that are pending as of the Effective Date, that are arising out of, under or related to, these Chapter 11 Cases, including, without limitation, the Retained Causes of Action, and that are with respect to this Plan. For the avoidance of doubt, the Bankruptcy Court shall retain jurisdiction over (1) the Williams Litigation; (2) that certain litigation styled as *Schmid Pipeline Construction, Inc. v. Columbia Gas Transmission, LLC and Welded Construction, L.P.*, Adv. Case No. 19-50886 (CSS); and (3) that certain litigation styled as *Earth Pipeline Services, Inc. v. Columbia Gas Transmission, LLC*, Adv. Case Nos. 19-50274 (CSS) and 19-50275 (CSS);

(f) enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of this Plan and all contracts, instruments, releases and other

agreements or documents created, executed or contemplated in connection with this Plan, the Disclosure Statement or the Confirmation Order, including, without limitation, the Plan Settlement and the Indemnity Agreement;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of this Plan, including disputes arising under agreements, documents or instruments executed in connection with this Plan, including, without limitation, the Plan Settlement and the Indemnity Agreement;

(h) consider any modifications of this Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the implementation, consummation or enforcement of this Plan or the Confirmation Order;

(j) enter and implement such Orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;

(k) hear and determine any matters arising in connection with or relating to this Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or Final Order of the Bankruptcy Court, or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with these Chapter 11 Cases, including, without limitation, the Plan Settlement Agreement, the Indemnity Agreement and any and all customer completion agreements, including, but not limited to, the (1) Columbia Gas Agreement, (2) each of the Commitment Letters, (3) the Consumers Agreement and (4) the ETP Agreement (each defined and discussed more fully in the Disclosure Statement);

(m) except as otherwise limited herein, recover all Assets of the Debtors, wherever located;

(n) hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits or disputes related to the Estates, including, but not limited to, the Debtors' Assets; and

(q) enter a final decree closing these Chapter 11 Cases.

**10.2 Failure of the Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction

over any matter arising in, arising under, or related to these Chapter 11 Cases, including the matters set forth in Section 10.1 of this Plan, the provisions of this Article X shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**11.1 Administrative Claims Bar Date.** *All requests for payment of an Administrative Claim arising on or after April 1, 2019 must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtors, and counsel to the U.S. Trustee no later than thirty five (35) days after the Effective Date.* In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

**11.2 Professional Fee Claims.** (a) *All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtors and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtors, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional);* (b) all Professional Fee Claims shall be paid by the Estates to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On or before the Effective Date, the Debtors shall establish the Professional Fee Reserve, which shall only be used to pay (i) Professional Fee Claims and (ii) any claims of Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable) for compensation or reimbursement of costs and expenses relating to services provided to the Debtors during the period from the Petition Date through the Effective Date, unless and until all Professional Fee Claims and any such claims of Zolfo Cooper Management, LLC and AlixPartners, LLP (as applicable) have been paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estates and shall be maintained by the Post-Effective Date Debtors in accordance with this Plan and the Plan Administrator Agreement. The Estates shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims and unpaid claims of Zolfo Cooper Management, LLC and AlixPartners, LLP, as applicable, for compensation or reimbursement of costs and expenses relating to services provided to the Debtors Estates during the period from the Petition Date through the Effective Date. If the Debtors and the Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released back to the Estates to be used for other purposes consistent with this Plan and the Plan Administrator Agreement.

**11.3 Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Estates, the Post-Effective Date Debtors and the Plan Administrator in the ordinary course. The Post-Effective Date Debtors and the Plan Administrator shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code for each Debtor until its particular case is closed, dismissed or converted. Notwithstanding anything to the contrary in this Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

**11.4 Dissolution of Committee.** On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals or other agents thereof shall be released from all rights and duties arising from or related to these Chapter 11 Cases or this Plan and its implementation, and the retention or employment of the Committee's attorneys and financial advisors and other agents shall terminate, provided, however, that the Committee shall continue in existence and its Professionals shall continue to be retained with respect to (i) applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code and (ii) any appeals of the Confirmation Order.

**11.5 Modifications and Amendments.**

(a) The Debtors may alter, amend or modify this Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments or modifications to this Plan must comply with section 1127 of the Bankruptcy Code. The Debtors shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of this Plan, the Debtors or the Post-Effective Date Debtors, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement approved with respect to this Plan or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of this Plan. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

**11.6 Severability of Plan Provisions.** If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to

make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted, is valid and enforceable pursuant to its terms.

**11.7 Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor or assign of such Entity; provided, however, that beneficial interests in the Estates shall be non-transferable except upon death of the interest holder or by operation of law.

**11.8 Post-Effective Date Compromises and Settlements.** From and after the Effective Date, the Post-Effective Date Debtors may compromise and settle Claims against the Debtors and their Estates, as well as the Retained Causes of Action, without any further approval by or notice to the Bankruptcy Court, except with respect to the Williams Litigation, which shall be treated in accordance with the Surety Cooperation Agreement Order.

**11.9 Binding Effect of Plan.** Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to this Plan and this Plan shall be binding on all parties to the fullest extent permitted by section 1141(a) of the Bankruptcy Code.

**11.10 Non-Discharge of the Debtors; Injunction.** In accordance with section 1141(d)(3) of the Bankruptcy Code, this Plan does not discharge the Debtors. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by this Plan is free and clear of all Claims and Interests. As such, no Person or Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtors and their Estates or the Post-Effective Date Debtors other than Assets or property required to be distributed to that Person or Entity under this Plan. As of the Effective Date, all parties are precluded from asserting against any Assets or property of the Debtors and their Estates and the Post-Effective Date Debtors any Claims, rights, causes of action, liabilities or Interests based upon any act, omission, transaction or other activity that occurred before the Effective Date except as expressly provided in this Plan or the Confirmation Order.

Except as otherwise expressly provided for in this Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

- (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors, their Estates, the Post-Effective Date Debtors, their successors and assigns and any of their Assets and properties;



**(b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtors, their Estates, the Post-Effective Date Debtors, their successors and assigns and any of their Assets and properties;**

**(c) creating, perfecting or enforcing any encumbrance of any kind against the Debtors, their Estates, the Post-Effective Date Debtors, their successors and assigns and any of their Assets and properties;**

**(d) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtors, their Estates, the Post-Effective Date Debtors or their successors and assigns, or against any of their Assets and properties, except to the extent that a right to setoff or subrogation is asserted in a timely filed proof of claim; or**

**(e) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim, Interest or cause of action released or settled hereunder.**

**From and after the Effective Date, all Persons and Entities are permanently enjoined from commencing or continuing in any manner against the Debtors, their Estates, the Post-Effective Date Debtors, the Released Parties, their successors and assigns and any of their Assets and properties, any suit, action or other proceeding, on account of or respecting any claim, interest, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to this Plan or the Confirmation Order.**

### **11.11 Releases and Related Matters.**

(a) **Releases by Debtors.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of these Chapter 11 Cases and other actions contemplated by this Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with this Plan and these Chapter 11 Cases, including, without limitation, the Plan Settlement, the Released Parties are deemed forever released by the Debtors and the Estates, and anyone claiming by or through the Debtors and the Estates, from any and all claims, interests, obligations, rights, suits, damages, causes of action, (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtors and the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Estates, these Chapter 11 Cases, this Plan, the Disclosure Statement or related agreements, instruments or other documents in these Chapter 11 Cases. For the avoidance of doubt, with respect to contingent Claims asserted by Debtors' current or former officers and managers, the Plan Administrator retains all rights to reconcile such Claims, consistent with the Plan Settlement Agreement.

(b) **Releases by Holders of Claims.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of these Chapter 11 Cases and other actions contemplated by this Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with this Plan and these Chapter 11 Cases, including, without limitation, the Plan Settlement, and subject to Section 11.11(e) of this Plan, each of the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtors and the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Releasing Party would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Estates, these Chapter 11 Cases, this Plan, the Disclosure Statement or related agreements, instruments or other documents; provided, however, that nothing herein shall be deemed a waiver or release of any right of any such Releasing Parties to receive a Distribution pursuant to the terms of this Plan; provided further, however, that the foregoing provisions of this release in Section 11.11(b) of this Plan shall not operate to waive, release or otherwise impair any causes of action arising from criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or

any other court of competent jurisdiction. For the avoidance of doubt, notwithstanding anything to the contrary herein, the foregoing release by the Releasing Parties is not, and shall not be deemed to be, in exchange for a waiver of the Debtors' rights or claims against the Releasing Parties, including the Debtors' rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved. Notwithstanding any of the foregoing, nothing in this Section is intended to limit or otherwise modify any releases or waivers that are separately provided for in any other Final Order (including settlement or other agreements authorized thereby) of the Bankruptcy Court.

(c) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval of the releases set forth in this Section 11.11; and (ii) the Bankruptcy Court's findings that, among other things, such releases are (1) in the best interests of the Debtors, the Estates and all Holders of Claims that are Releasing Parties, (2) fair, equitable and reasonable, (3) given and made after due notice and opportunity for objection and hearing, (4) consensual, (5) supported by consideration, and (6) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(d) Each Holder of a Claim in Class 4 and 5 shall be a Releasing Party and, as such, provides the releases set forth in Section 11.11(b) of this Plan, unless such Holder timely submits a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.11(b) of this Plan, or Files an objection to the releases in Section 11.11(b) of this Plan prior to the deadline to object to Confirmation of this Plan.

(e) Federal Insurance Company Release. On behalf of itself and any person or entity claiming by or through Federal Insurance Company or any of its Related Parties, Federal Insurance Company grants the releases set forth in Section 11.11(b) of this Plan to each of the Released Parties except for the direct claims against the Debtors, which are preserved, and except for any claims arising under or relating to (a) bonds issued on behalf of entities other than Welded Construction, L.P., and associated indemnity agreements, (b) insurance contracts and related agreements, including collateral agreements, pertaining to the Released Parties, and (c) any other contract to which a Released Party is a direct party.

**11.12 Exculpation and Limitation of Liability.** On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission in connection with, relating to, or arising out of these Chapter 11 Cases, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of this Plan, the Disclosure Statement, the Plan Administrator Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with this Plan, or the administration of this Plan or the Assets and property to be distributed under this Plan; provided, however, that the exculpation provisions of this Section 11.12 shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by such Exculpated Party, as determined by a Final Order. The Confirmation Order and this Plan shall serve as a permanent injunction against any Person or Entity seeking to enforce any

**claim or cause of action against the Exculpated Parties that has been exculpated pursuant to this Section 11.12 of this Plan.**

**11.13 Term of Injunctions or Stays.** Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from this Plan or the Confirmation Order), shall remain in full force and effect.

**11.14 Revocation, Withdrawal or Non-Consummation.** The Debtors reserve the right to revoke or withdraw this Plan at any time prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw this Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Interests in, any Debtor, or any Avoidance Actions, Retained Causes of Action or other claims by or against any Debtor or any Entity, (ii) prejudice in any manner the rights of any Debtor or any Entity in any further proceedings involving a Debtor or (iii) constitute an admission of any sort by any Debtor or any other Entity.

**11.15 Computation of Time.** In computing any period of time prescribed or allowed by this Plan, the provisions of Rule 9006(a) of the Bankruptcy Rules shall apply.

**11.16 Headings.** The headings of articles, paragraphs and subparagraphs of this Plan are inserted for convenience only and shall not affect the interpretation of any provision of this Plan.

**11.17 Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), and except as otherwise provide herein, the laws of (a) the State of Delaware shall govern the construction and implementation of this Plan and (except as may be provided otherwise in any such agreements, documents or instruments) any agreements, documents and instruments executed in connection with this Plan and (b) the laws of the state of formation of each Debtor shall govern corporate governance matters with respect to such Debtor; in each case without giving effect to the principles of conflicts of law thereof.

**11.18 Notices.** Following the Effective Date, all pleadings and notices Filed in these Chapter 11 Cases shall be served solely on (i) the Post-Effective Date Debtors and their counsel, (ii) the U.S. Trustee, (iii) any party whose rights are affected by the applicable pleading or notice and (iv) any party Filing a request with the Bankruptcy Court in these Chapter 11 Cases to receive notices and papers in these Chapter 11 Cases following the Effective Date.

**11.19 Preservation of Retained Causes of Action.**

**11.19.1 Vesting of Causes of Action.**

- (a) Except as otherwise provided in this Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtors may hold against any Person or Entity shall vest upon the Effective Date in the Post-Effective Date Debtors.
- (b) Except as otherwise provided in this Plan or Confirmation Order, after the Effective Date, the Post-Effective Date Debtors shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in accordance with the terms of this Plan and the Plan Administrator Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in one or more of the Chapter 11 Cases; provided, however, that the Williams Litigation shall be treated in accordance with the Surety Cooperation Agreement Order.

**11.19.2 Reservation of Causes of Action.** Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in this Plan, the Confirmation Order or any Final Order, the Debtors, the Estates and the Post-Effective Date Debtors expressly reserve such Retained Cause of Action for later adjudication by the Post-Effective Date Debtors, including, without limitation, Retained Causes of Action of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or Confirmation Order, except where such Retained Causes of Action have been expressly waived, relinquished, released, compromised or settled in this Plan, the Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Post-Effective Date Debtors which agreement, by its terms, is not subject to Bankruptcy Court approval.

**11.20 Bar Date Orders.** Nothing herein extends or otherwise modifies a bar date established in the Bar Date Orders or other Final Order of the Bankruptcy Court.

**11.21 Section 1146 Exemption.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under this Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by this Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtors pursuant to, in implementation of, or as contemplated by this Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

**11.22 Conflicts with this Plan.** In the event and to the extent that any provision of this Plan is inconsistent with the provisions of the Disclosure Statement and any other Order in these Chapter 11 Cases, or any other agreement to be executed by any Person pursuant to this Plan, the provisions of this Plan shall control and take precedence; provided, however, that (1) the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of this Plan, and any of the foregoing documents and (2) except as to the

Settlement Agreement and section 11.11 of this Plan, the Order Approving Litigation Funding and Cooperation Agreement shall control, and take precedence in the event of any inconsistency between the terms of the Plan and the terms of the Litigation Funding and Cooperation Agreement.

**11.23 No Stay of Confirmation Order.** The Debtors will request that the Bankruptcy Court waive any stay of enforcement of the Confirmation Order otherwise applicable, including, without limitation, pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

## **ARTICLE XII**

### **THE PLAN SETTLEMENT**

**12.1 The Plan Settlement.** Following good faith and arm's length negotiations, in exchange for the releases and other valuable consideration provided for in this Plan, the Debtors, the Committee and the Partner Settlement Parties (i.e., the Plan Settlement Parties) have agreed to the settlement provided for in the Plan Settlement Agreement and Indemnity Agreement annexed hereto as **Exhibit A** and fully incorporated herein as a material component of the Plan. The Plan Settlement and Indemnity Agreement each provide significant value to the Debtors and their Estates, favorably resolve and avoid potential protracted expensive and uncertain litigation, and enable the prompt and efficient wind-down of the Debtors' Estates through this Plan. The Plan Settlement is integral to the development and implementation of this Plan. This Plan, taken together with the Disclosure Statement, shall serve as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Holders of Claims and Interests and other parties in interest, and are fair, equitable, and reasonable.

**12.1.1 Plan Settlement Payment.** Within ten (10) days of the Confirmation Order becoming a Final Order, the Partner Settlement Parties shall make the Plan Settlement Payment to the Debtors or the Post-Effective Date Debtors, as applicable.

## **ARTICLE XIII**

### **REQUEST FOR CONFIRMATION**

**13.1 Request for Confirmation.** The Debtors request Confirmation of this Plan in accordance with section 1129(b) of the Bankruptcy Code.

IN WITNESS WHEREOF, the Debtors have executed this Plan this 27th day of  
April, 2020.

By: /s/ Frank L. Pometti  
Frank Pometti, Chief Restructuring Officer  
Welded Construction, L.P.  
Welded Construction Michigan, LLC

**EXHIBIT A**

Plan Settlement Agreement



## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (this “Settlement Agreement”) is made as of April [ ], 2020 by and between (i) Welded Construction, L.P. and Welded Construction Michigan, LLC (collectively, the “Debtors”) on behalf of themselves, their successor(s), their bankruptcy estates, and any succeeding retained bankruptcy estate under the Plan (the “Estate”), (ii) the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (as defined below) (the “Committee”), and (iii) Bechtel GP, Bechtel LP, Bechtel Corporation, Bechtel Global Corporation, Bechtel Oil, Gas and Chemicals, Inc., Bechtel Equipment Operation Inc., Bechtel Power Corporation, McCaig GP, and McCaig LP (collectively, the “Partner Settlement Parties”, and together with the Debtors and Committee, the “Parties”).

### **RECITALS**

**WHEREAS**, on October 22, 2018, the Debtors filed voluntary petitions seeking relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and commencing cases under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) before the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

**WHEREAS**, on October 30, 2018, the Committee was appointed by the United States Trustee;

**WHEREAS**, following its appointment, the Committee undertook an investigation (the “Investigation”) of any and all actions, causes of action (including any causes of action under chapter 5 of the Bankruptcy Code), claims, charges, demands, damages, judgments, obligations, losses, expenses, liens, costs, penalties, attorneys’ fees, or any other compensation, of any kind, whether in law, equity or otherwise, and/or any other claims, whether known or unknown, fixed or contingent, joint and/or several, direct, indirect, or derivative, asserted or unasserted against the Partner Settlement Parties, in any way arising out of, in connection with or otherwise relating to any act, fact, event or omission or other matter, cause or thing occurring at any time, with respect to the status of any Partner Settlement Party as an equity holder of the Debtors, the actions or omissions of any Partner Settlement Party as a former or current director or officer of Debtors or any of its subsidiaries, the actions or omissions of any Partner Settlement Party relating to the business and operations of the Debtors and its subsidiaries and/or any other agreement, certificate, instrument and other documents or statements (whether written or oral) related in any way to the foregoing (collectively with any other claims or causes of action which could be asserted by the Committee or the Debtors against the Partner Settlement Party Releasees (as defined below), the “Partner Settlement Party Claims”);

**WHEREAS**, in connection with the Investigation, the Debtors provided the Committee with responses to various informal discovery and diligence requests, and further conducted their own investigation of Partner Settlement Party Claims;

**WHEREAS**, the Partner Settlement Parties deny that the Committee or Debtors have any Partner Settlement Party Claims, or any other claims or causes of action against the Partner Settlement Party Releasees (as defined below), and deny any and all of the Committee’s allegations relating thereto;

**WHEREAS**, over the course of several months, the Parties have exchanged information and negotiated in good faith regarding the Partner Settlement Party Claims and the *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC*, which shall include this Settlement Agreement as an Exhibit thereto (the “Plan”).<sup>1</sup> The Plan shall be filed with the Bankruptcy Court contemporaneously herewith;

**WHEREAS**, following good faith and arm’s length negotiations, in exchange for the releases and other valuable consideration provided for in the Plan and herein, the Parties have agreed to the settlement provided for herein (the “Plan Settlement”), and now desire to resolve, fully and finally, all matters respecting the Partner Settlement Party Claims, upon the terms and conditions set forth below; and

**WHEREAS**, the Parties believe that the Plan Settlement provides significant value to the Debtors and their Estates, favorably resolves and avoids potential protracted expensive and uncertain litigation, and enables the prompt and efficient wind-down of the Debtors’ Estates through the Plan, and that the Plan Settlement is integral to the development and implementation of the Plan.

**NOW THEREFORE**, for good and valuable consideration, it is hereby stipulated, consented to and agreed by and among the Parties as follows:

1. **Effectiveness.** This Settlement Agreement shall be effective immediately upon the date on which the Confirmation Order becomes a Final Order (the “Agreement Effective Date”).

2. **Implementation.** The Plan shall serve as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of each of the compromises and settlements provided for in the Plan Settlement, and the Bankruptcy Court’s findings made in connection with the Confirmation Order shall constitute the Bankruptcy Court’s determination that the compromises and settlements contained herein are in the best interests of the Debtors, their Estates, Holders of Claims and Interests and other parties in interest, and are fair, equitable, and reasonable.

3. **Settlement Amount.** The Partner Settlement Parties shall pay to the Debtors and/or their successor Estate representative(s) (the “Estate Representative”) an aggregate cash payment of \$2,000,000.00 (the “Plan Settlement Payment”), in full payment, satisfaction and settlement of the Partner Settlement Party Claims. Subject to the prior receipt of appropriate wire instructions and tax forms, the Plan Settlement Payment shall be paid in full within ten (10) days of the Agreement Effective Date. Receipt by the Debtors of the Settlement Sum and the other consideration set forth herein shall constitute full and final payment, satisfaction and settlement of any and all Partner Settlement Party Claims.

4. **Waiver and Release of Claims by Partner Settlement Parties.** Effective as of the Agreement Effective Date, the Partner Settlement Parties, on behalf of themselves and any person or entity claiming by or through the Partner Settlement Parties, except as provided in section 8 below, (i) waive any and all claims and/or requests for payment, whether administrative, priority or unsecured in nature, that have been, could have been or could be asserted by the Partner

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Plan.

Settlement Parties (or any person or entity claiming by or through the Partner Settlement Parties) against the Debtors and their Estates, including, without limitation, any and all claims asserted in the *Requests for Payment of Administrative Expense Claim For the Period From the Petition Date Through And Including March 31, 2019* filed at Docket Nos. 681 and 686 in the Chapter 11 Cases, the proofs of claim numbered 600, 601, 790 and 792 filed in the Chapter 11 Cases by, and any claims scheduled in the Schedules for, the Partner Settlement Parties, and (ii) grant the releases set forth in Section 11.11(b) of the Plan as if the Partner Settlement Parties are “Releasing Parties” for purposes of such section that did not timely submit a Release Opt-Out or did not File an objection to such releases.

5. **Waiver and Release of Claims by the Debtors and their Estates.** Effective as of the Agreement Effective Date, the Debtors and their Estates, on behalf of themselves and their respective affiliates (other than the Partner Settlement Parties), and, as may be permitted under applicable law, on behalf of current and former officers, managers, directors, employees, lenders, partners, professionals, advisors, agents, members, and other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the successors, assigns or heirs of each of the foregoing, shall grant the releases provided for in Section 11.11 of the Plan to the Partner Settlement Party Releasees (as defined below) on behalf of themselves and their successors and assigns (the “Partner Settlement Release”), which releases shall knowingly and voluntarily release, waive and forever discharge to the fullest extent permitted by law each Partner Settlement Party and, with respect to each Partner Settlement Party, its current and former shareholders, officers, managers, directors, employees, lenders, partners, affiliates, professionals, advisors, agents, members, and other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the successors, assigns or heirs of each such Partner Settlement Party (collectively with the Partner Settlement Parties, the “Partner Settlement Party Releasees”) from any and all Partner Settlement Party Claims.

6. **Plan Support; Committee Consent.** Each of the Partner Settlement Parties, the Debtors, and the Committee shall support the Confirmation and consummation of the Plan, including, without limitation, all of the releases provided for in the Plan. The Committee: (i) consents to and is bound by the releases provided for in Section 11.11 of the Plan and (ii) shall, subject to its fiduciary duty to creditors, use commercially reasonable efforts to obtain the third-party releases provided for in Section 11.11 of the Plan from all members of the Committee. Each Partner Settlement Party shall: (x) if entitled to do so, vote to accept the Plan; and (y) not object to or otherwise impede Confirmation of the Plan. The Debtors and Committee shall not amend or modify the Partner Settlement Release set forth in Section 11.11 of the Plan or the opt out procedures with respect to the third-party release contained therein (the “Release Provisions”), in each case without the prior written consent of the Partner Settlement Parties. Each of (i) the Partner Settlement Party Releases set forth in Section 11.11 and (ii) the Debtor’s release of the Plan Settlement Parties (as set forth in the Release Provisions) shall be in form and substance acceptable to the Partner Settlement Parties and the Committee. In addition, the Debtors and the Committee shall not amend or modify, or consent to any amendment or modification of, any other provision of the Plan in any manner that materially adversely impacts the Partner Settlement Parties without the prior written consent of the Partner Settlement Parties.

7. **Central States Claim.** Bechtel Global Corporation hereby agrees to enter into that certain *Indemnity Agreement* with Welded Construction, L.P., in the form set forth as Exhibit A hereto (the “Indemnity Agreement”), pursuant to which, among other things, the Debtors have agreed that their liability with respect to that certain proof of claim number 534 (as it may be amended, the “Withdrawal Liability Claim”) filed by the Central States, Southeast and Southwest Areas Pension Fund (the “Central States”) in the Chapter 11 Cases shall be determined in the arbitration against Central States demanded by Bechtel on January 8, 2020, by the filing of an arbitration demand with the American Arbitration Association (the “Arbitration”), and Bechtel Global Corporation has agreed to indemnify the Debtors against the Withdrawal Liability Claim. Bechtel Global Corporation (and no other party) shall be deemed to have standing in the Chapter 11 Cases to file and prosecute objections to the Withdrawal Liability Claim and any other Claims filed by Central States, including, without limitation, standing to file such objections, commence adversary proceedings or other contested matters against Central States, as may be necessary, as well as to assert any affirmative defenses, counterclaims, setoffs, claims for subordination or recharacterization, or Retained Causes of Action that the Debtors, their Estates or Post-Effective Date Debtors may hold against Central States; provided, however, that the Debtors and their Estates or the Estate Representative shall have the right to file and prosecute a motion to estimate the Withdrawal Liability Claim pursuant to section 502(c) of the Bankruptcy Code, solely in connection with establishing that, as a result of the protections afforded by the Indemnity Agreement, no reserve is required on account of such Withdrawal Liability Claim for Plan distribution purposes; provided further, that no such estimation motion shall seek a determination from the Bankruptcy Court as to the actual amount of the liability of the Debtors, if any, to Central States, which liability, if any, the Parties agree will be determined in the Arbitration.

8. **Letter of Credit Funds.** The Parties agree that any residual proceeds of the letter of credit posted for the benefit of Zurich American Insurance Company and its affiliates by Welded Construction, L.P., but paid for by Bechtel Corporation and/or its affiliates (the “**Residual LOC Proceeds**”), are not property of the Estates and shall not be deemed Assets that vest in the Post-Effective Date Debtors but shall be the sole and exclusive property of Bechtel Corporation and/or its affiliates. Any Residual LOC Proceeds that are refunded to the Debtors or the Post-Effective Date Debtors shall be forwarded to Bechtel Global Corporation or its applicable affiliate by the Plan Administrator within three (3) Business Days after receipt of such Residual LOC Proceeds.

9. **Cooperation.** The Parties agree to cooperate, in a commercially reasonable manner, in (i) the Williams Litigation, (ii) any actions or claims brought by the Debtors and/or Estate Representative against Columbia Gas Transmission LLC, and (iii) any actions or claims brought by the Debtors and/or Estate Representative against Earth Pipeline Services, Inc., in each case including but not limited to by responding to discovery requests and making available pertinent witnesses to assist with fact investigation, depositions, and/or hearing testimony.

10. **Actions to Effectuate or Enforce Settlement Agreement.** Notwithstanding the provisions of Paragraphs 4 and 5 hereof and Section 11.11 of the Plan, the release provisions set forth therein shall not apply to the Parties’ obligations under this Settlement Agreement or any actions relating to, or to enforce the terms of, this Settlement Agreement.

11. **Binding on Successors.** This Settlement Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the heirs, successors,

transferees, and assigns of each of the Parties hereto. Except as provided in the Plan, neither this Settlement Agreement nor any of the rights or obligations hereunder may be assigned or delegated by any Party hereto, without the prior written consent of the other Parties hereto, other than in connection with the sale or transfer of all or a substantial portion of the business of any of the Partner Settlement Parties (regardless of the legal form).

12. **Amendments; Entire Agreement.** This Settlement Agreement shall not be modified, altered, or amended without the prior written consent of each of the Parties hereto. This Settlement Agreement constitutes the entire agreement of the Parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements among the Parties concerning such subject matter. The Parties acknowledge that this Settlement Agreement is not being executed in reliance on any oral or written agreement, promise or representation not contained herein.

13. **Conflict in Terms.** In the event of any conflict between the terms of this Settlement Agreement and the Plan, the terms of this Settlement Agreement shall control.

14. **Reliance on Legal Counsel.** Each Party acknowledges that it is a sophisticated entity, that it has been represented in the negotiations for and in the execution of this Settlement Agreement by counsel of its own choice, and that it has read this Settlement Agreement and is fully aware of its contents and legal effect.

15. **Representation of Authority.** The Parties expressly represent and warrant that, no other person or entity has or had any interest in the Partner Settlement Party Claims or any other claims, demands, obligations, or causes of action covered by this Settlement Agreement; and that, subject to Bankruptcy Court approval of the Plan Settlement and this Settlement Agreement and confirmation of the Plan, each Party referenced herein has the authority to sign this Settlement Agreement, by and through its designated representative(s); and that no Party has sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement. The Parties each expressly represent and warrant that the consent, approval, or authorization of no other person, entity or governmental or regulatory authority, other than the Bankruptcy Court, is required to approve the terms of this Settlement Agreement in order for the releases set forth herein to be effective.

16. **Jurisdiction; Governing Law.** In the event of a dispute concerning this Settlement Agreement, including without limitation any action to enforce the terms hereof, the Parties agree and consent to the exclusive jurisdiction of the Bankruptcy Court. This Settlement Agreement and all claims and disputes arising out of or in connection with this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of Delaware.

17. **Counterparts.** This Settlement Agreement may be executed in counterparts and by electronic or facsimile signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement to be effective, provided each and every Party has executed and delivered, or caused to be delivered, to each other Party at least one counterpart of this Settlement Agreement signed by that Party.

18. **Drafting.** The Parties have participated in and jointly consented to the drafting of this Settlement Agreement, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

19. **No Admissions.** This Settlement Agreement and all negotiations, statements and proceedings in connection therewith are not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of any fault, liability or wrongdoing whatsoever. Neither this Settlement Agreement nor any matter relating to it may be offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or proceeding as evidence of any wrongdoing or liability.

20. **Specific Performance.** The Parties hereto agree that irreparable damage would occur and that the Parties hereto would not have any adequate remedy at law in the event that any of the provisions of this Settlement Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each Party hereto shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of this Settlement Agreement and to seek to enforce specifically the terms and provisions of this Settlement Agreement (and, to the fullest extent permitted by law, each party hereto hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to each such Party is entitled at law or in equity. For the avoidance of doubt, this paragraph shall not modify the Debtors' and/or the Estate Representative's rights of indemnification as set forth in the Indemnity Agreement.

21. **Notice.** All notices or other communications that any Party desires or wishes to give under this Settlement Agreement shall be given in writing and shall be sent by first class mail, hand delivery or overnight courier (with a courtesy copy sent by email) to the other Party or Parties via their counsel at the addresses stated in the signature pages below or such other addressees as a Party may designate for itself in writing.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned have caused this Settlement Agreement to be duly executed, effective as of the date first written above.

The Official Committee of Unsecured Creditors of Welded Construction, L.P. and its affiliated debtor, as the Committee

Bechtel GP, Bechtel LP, Bechtel Corporation, Bechtel Global Corporation, Bechtel Oil, Gas and Chemicals, Inc., McCaig GP, and McCaig LP, as Partner Settlement Parties

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

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

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

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

BLANK ROME LLP  
Michael B. Schaedle, Esq.  
John E. Lucian, Esq.  
One Logan Square  
130 North 18th Street  
Philadelphia, PA 10103  
Telephone: (215) 569-5762  
Telephone: (215) 569-5442  
E-mail: schaedle@kramerlevin.com  
E-mail: lucian@blankrome.com

GIBSON, DUNN & CRUTCHER LLP  
Michael A. Rosenthal, Esq.  
Matthew K. Kelsey, Esq.  
200 Park Avenue  
New York, NY 10166-0193  
Telephone: (212) 351-3969  
Telephone: (212) 351-2615  
Email: mrosenthal@gibsondunn.com  
Email: mkelsey@gibsondunn.com

Welded Construction, L.P. and Welded Construction Michigan, LLC, as Debtors

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

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

YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach, Esq.  
Matthew B. Lunn, Esq.  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6699  
Telephone: (302) 571-6621  
Email: sbeach@ycst.com  
Email: mlunn@ycst.com

*[Signature Page to Settlement Agreement]*

**EXHIBIT A**

**Indemnity Agreement**



## INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of April, 2020, by Bechtel Global Corporation (“Bechtel” or “Indemnitor”) and Welded Construction, L.P., on behalf of itself, its estate in the Bankruptcy Proceeding (as defined below), and including any successor thereto under the Plan (as defined below) as an estate representative (“Welded”) (together, the “Parties”).

**WHEREAS**, Welded and its wholly-owned subsidiary Welded Construction Michigan, LLC (collectively, the “Debtors”) are debtors in a Chapter 11 proceeding (“Bankruptcy Proceeding”) pending in the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”);

**WHEREAS**, the Central States, Southeast and Southwest Areas Pension Fund (“Fund”) on February 26, 2019, filed Claim #534 (“Claim”) in the Bankruptcy Proceeding in the amount of \$38,813,994.99 related to an alleged complete withdrawal from the Fund under ERISA § 4203(a);

**WHEREAS**, on April 24, 2019, the Fund assessed withdrawal liability against Bechtel in the same amount related to the same alleged complete withdrawal (“Demand”);

**WHEREAS**, the Fund asserts that the Parties were members of the same controlled group of corporations as defined in ERISA § 4001(b) during the relevant time related to the Claim and Demand and thus are jointly and severally liable in the event there is liability;

**WHEREAS**, the Parties agree that substantially the same set of operative facts, as well as most of the defenses and/or counterclaims apply to both Bechtel and Welded;

**WHEREAS**, Bechtel initiated arbitration against the Fund with the American Arbitration Association, Case No. 01-20-0000-0757, on January 8, 2020 (“Bechtel Arbitration”);

**WHEREAS**, Welded initiated arbitration against the Fund with the American Arbitration Association, Case No. 01-20-0000-1812, on January 16, 2020 (“Welded Arbitration”);

**WHEREAS**, Bechtel, Welded and Central States have entered into a written agreement that binds all parties to the outcome of the Bechtel Arbitration and under which the parties agreed to stay the Welded Arbitration;

**WHEREAS**, Welded has filed the *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC*, which is in form and substance acceptable to the Debtors and the Official Committee of Unsecured Creditors (the “Committee”), and includes a settlement agreement by and among the Debtors, the Committee, Bechtel, certain other Bechtel entities, McCaig GP, and McCaig LP that is acceptable to Bechtel and Welded (the “Plan”);<sup>1</sup>

**AND WHEREAS**, the Parties agree that this Agreement benefits the estate and its

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Plan.

creditors in the Bankruptcy Proceeding and increases judicial efficiency;

**NOW, THEREFORE**, for and in consideration of the promises and agreements hereinafter set forth, the Parties agree as follows:

1. **Indemnity and Duty to Defend.** From the date of this Agreement, Bechtel hereby indemnifies each of the Debtors and each of their respective successors, assigns and subsidiaries, including any plan trustees, liquidating trusts, liquidating trustees, plan administrators, or liquidating agents of the Debtors' estates under any plan of reorganization, and each of their respective officers and directors (collectively "Welded Indemnitees") for any amounts that the Welded Indemnitees owe to the Fund as a result of a final award to the Fund in the Bechtel Arbitration or the Welded Arbitration or otherwise in any related action, proceeding or appeal (whether in the Bechtel Arbitration, the Welded Arbitration, or in another court or adjudicatory/appellate body of competent jurisdiction (including but not limited to withdrawal liability, interim payments, interest, liquidated damages, surcharges, and attorneys' fees or costs awarded to the Fund). Bechtel shall reimburse the Welded Indemnitees for any such amounts paid by the Welded Indemnitees within five (5) business days of such payment by Federal Reserve wire transfer as further specified in the Plan (for the avoidance of doubt, if the Welded Indemnitees lack sufficient funds to make payments subject to this paragraph and under the Plan, then Bechtel shall make such payments directly). From the date of this Agreement, Bechtel agrees to defend the Welded Indemnitees against any and all claims, demands, or actions of any kind whatsoever in law or in equity, which the Fund has brought, or may in the future bring, against the Welded Indemnitees in the Bechtel Arbitration or the Welded Arbitration, or any appeals thereof or collection actions related thereto, or in any related action, proceeding or appeal (whether in the Bechtel Arbitration, the Welded Arbitration, or in another court or adjudicatory/appellate body of competent jurisdiction).

2. **Estimation of the Claim Reserve.** Welded agrees that it will move the Bankruptcy Court to estimate the reserve for the Claim in the Bankruptcy Proceeding for distribution purposes at \$0.00, and Bechtel shall have the right to review and consent to any such pleading before it is filed with the Bankruptcy Court; provided, however, that this Agreement is not conditioned upon the outcome of such claim estimation proceeding.

3. **Claim Adjudication.** The Parties agree that, except with respect to the estimation of the Claim reserve for distribution purposes in the Bankruptcy Proceeding, the Claim shall be fully adjudicated in the Bechtel Arbitration and/or the Welded Arbitration, and Bechtel shall, on behalf of Welded, lead any such arbitration litigation (at Bechtel's sole expense) and any appeals thereof. Welded agrees that it shall not proceed with the Welded Arbitration without the prior written consent of Bechtel.

4. **Authority to Settle.** Bechtel shall have the right in its absolute and sole discretion to control and direct any settlement negotiations regarding the Claim and/or regarding the Welded Arbitration.

5. **Cooperation.** The Parties agree to cooperate, in a commercially reasonable manner, in any (i) proceeding or contested matter in the Bankruptcy Court to estimate the Claim

or determine whether a reserve should be established for it (the “Reserve Proceeding”), and (ii) in the Bechtel Arbitration and/or in the Welded Arbitration. Such cooperation shall include, but not be limited to responding to discovery requests and making available pertinent witnesses to assist with fact investigation, depositions, and/or hearing testimony. Bechtel agrees to reimburse the Welded Indemnitees for reasonable costs and expenses incurred by the Welded Indemnitees for work Bechtel requests pursuant to this Paragraph 5 in connection with the Bechtel Arbitration and/or the Welded Arbitration; *provided, however*, that Bechtel shall not be obligated to reimburse the Welded Indemnitees for any costs and expenses related to (i) the Reserve Proceeding or (ii) the first \$200,000 of reasonable fees and expenses incurred by Welded from and after the date of this Agreement for work Bechtel requests in connection with the Bechtel Arbitration and/or the Welded Arbitration.

6. **Representation of Financial Capability.** Bechtel represents and warrants that it is a wholly owned primary operating subsidiary of Bechtel Corporation and that it is appropriately capitalized to undertake the obligations herein. By the date of this Agreement, Bechtel Corporation shall provide Welded (with a copy to the Committee) a secretary’s certificate confirming this representation.

7. **Counterparts and Originals.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute and be one and the same instrument. Copies of this executed Agreement shall have the same effect as an original.

8. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of Delaware.

9. **Jurisdiction.** The Parties irrevocably and unconditionally submit to the jurisdiction of the Bankruptcy Court solely with respect to any and all disputes regarding the effect, scope, or interpretation of this Agreement.

10. **Successors and Assigns.** This Agreement shall be binding upon each Party’s successors and assigns, including without limitation, liquidating trusts, liquidating trustees, fiduciaries and representatives of the Debtors’ estates. This Agreement may only be transferred consistent with the terms of the Plan.

*[Signature page follows]*

IN WITNESS WHEREOF, the Indemnitor has executed this Agreement this \_\_\_\_ day of April, 2020.

**Bechtel**

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

Name: Clifton S. Rankin

Title: Deputy General Counsel, Bechtel Global Corporation

**Welded**

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

Name: Frank Pometti

Title: Chief Restructuring Officer, Welded Construction, L.P.

**EXHIBIT B**

Surety Cooperation Agreement Order

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

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

**ORDER APPROVING LITIGATION FUNDING AND COOPERATION AGREEMENT**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order, pursuant to sections 105(a), 363(b), and 364(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”); Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 4001-2 of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) approving that certain *Litigation Funding and Cooperation Agreement*, attached hereto as Exhibit 1 (the “**Cooperation Agreement**”), by and among Welded Construction, LP (“**Welded**”), Federal Insurance Company (the “**Surety**”) and the Official Committee of Unsecured Creditors (the “**Committee**” and, together with Welded and the Surety, the “**Parties**”), and (ii) authorizing the Debtors to take any and all actions necessary to effectuate the Cooperation Agreement; and upon consideration of the Motion and all pleadings related thereto; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion and the relief provided for herein is required; and it

---

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

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

appearing that the 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 an appropriate exercise of the Debtors' business judgment; 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 Cooperation Agreement, attached to this Order as Exhibit 1 and incorporated herein by reference as if set forth in full (including, without limitation, the estate sharing arrangement contained in paragraph 3 of the Cooperation Agreement), is approved in its entirety pursuant to sections 105(a), 363(b), and 364(c).
3. The Debtors are authorized to enter into the Cooperation Agreement, comply with their obligations thereunder, and to take all actions necessary to carry out the terms of the Cooperation Agreement.
4. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the Cooperation Agreement and the implementation of this Order.



KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Cooperation Agreement**



## LITIGATION FUNDING AND COOPERATION AGREEMENT

THIS LITIGATION FUNDING AND COOPERATION AGREEMENT (the “**Agreement**”) is made and entered into as of the 3rd day of May, 2019, by and between:

- 1) FEDERAL INSURANCE COMPANY (“**Surety**”),
- 2) WELDED CONSTRUCTION, LP (“**Debtor**”), and
- 3) OFFICIAL COMMITTEE OF UNSECURED CREDITORS (“**Committee**”) (all entities recited above, collectively, the “**Parties**”).

### WITNESSETH:

WHEREAS, Surety, on behalf of and at the request of Debtor, issued Performance Bond no. 8219-24-58 (the “**Bond**”) in the amount of \$454,471,254, naming Debtor as principal and Transcontinental Gas Pipe Line Company, LLC (“**Transcon**”) as obligee, relating to a construction contract dated August 10, 2016 between Debtor and Transcon (a company indirectly owned by Williams Partners Operating LLC and Williams Companies, Inc., (collectively, “**Williams**”)) for construction work on the Atlantic Sunrise natural gas pipeline (the “**Williams Project**”);

WHEREAS, as consideration for the issuance of the Bond, Debtor executed the General Indemnity Agreement dated February 27, 2017 (the “**Indemnity Agreement**”), pursuant to which Debtor agreed, among other things, to indemnify and hold Surety harmless from any losses incurred by Surety as a result of having issued the Bond;

WHEREAS, Surety has received claims on the Bond in excess of \$74 Million and has paid in excess of \$33 Million to date. Pursuant to the Surety’s right of equitable subrogation, the Surety asserts that it has a right to all contract balances due under the Williams Contract to the extent the Surety has satisfied claims made by subcontractors and suppliers under the Bond and further asserts that such right is superior to any right of the Debtor or any creditor of the Estate in the contract balances;

WHEREAS, the Debtor and the Committee have discussed the equitable subrogation rights with the Surety and the Parties have agreed to consent to such equitable subrogation rights, subject to the sharing arrangement set forth herein;

WHEREAS, without limiting other claims or causes of action that the Debtor or any other party in interest has or may have against Transcon, the Debtor has asserted that Transcon has failed to pay all of the amounts due to the Debtor under the Williams Contract and that such failure has contributed to Debtor’s inability to pay the subcontractors and suppliers on the Williams Project. The Debtor is prepared to prosecute affirmative claims against Transcon and Williams arising under or in relation to the Williams Project, including any contract or agreement related thereto with Transcon, Williams or either of their affiliates (the “**Williams Contract**”) for, among other things, the underpayments and other associated claims (the “**Williams Claims**”). The Parties agree that the net proceeds of any recovery on the Williams Claims should be paid to subcontractors and suppliers on the Williams Project, or otherwise to

the Surety pursuant to its equitable subrogation rights to the extent the Surety has satisfied claims made by subcontractors and suppliers under the Bond; provided, however, that the Surety has agreed to sharing a portion of the recovery on the Williams Claims, including any settlement thereof, with the Debtor's estate (the "**Estate**") for the benefit of the creditors in the Bankruptcy Case (as defined below);

WHEREAS, on October 22, 2018, the Debtor and Welded Construction Michigan, LLC (the "**Michigan Debtor**") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") and are currently operating as debtors-in-possession in cases jointly-administered under case no. 18-12378 (the "**Bankruptcy Case**");

WHEREAS, the Debtor and Surety are parties to that certain Joint Defense and Common Interest Agreement dated December 23, 2018 (the "**Debtor Joint Defense Agreement**") and the Committee and the Surety are parties to that certain Joint Defense and Common Interest Agreement dated as of February 6, 2019, (the "**Committee Joint Defense Agreement**") (the Debtor Joint Defense Agreement, the Committee Joint Defense Agreement and any other joint defense or common interest agreements by and between any of the Parties, whether or not in writing, are collectively referred to hereafter as the "**Joint Defense Agreements**");

WHEREAS, the Surety has agreed to provide funding to allow the Debtor to pursue the Williams Claims under the terms set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Litigation Costs. The Surety agrees to fund up to a maximum of \$2,500,000, subject to increase with the prior written consent of the Parties (the "**Litigation Fund**") for fees and costs actually incurred in prosecuting the claims and defenses of the Debtor arising under or in relation to the Williams Claims (the "**Williams Litigation**"). The Litigation Fund, to be further identified in a confidential budget provided solely to the Parties, shall be used to pay the fees and expenses of Young Conaway Stargatt & Taylor, LLP (counsel to the Debtor), Lewis Brisbois Bisgard & Smith LLP, AlixPartners, LLP, litigation consultants, experts, contractors, and e-Discovery vendors related solely to the extent of work performed or costs incurred in connection with the Williams Litigation, but shall not be used to pay the fees and expenses of any other entity, including but not limited to, the Committee appointed in the Bankruptcy Case or its professionals. Upon 30 days written notice to the Debtor, the Surety may terminate the obligation to fund the Williams Litigation for any fees or costs incurred from and after the expiration of such notice period (a "**Funding Termination Event**"); *provided, however*, that a decision by the Surety not to fund any amounts in excess of \$2,500,000 to the Litigation Fund shall not be deemed a Funding Termination Event. Upon a Funding Termination Event where the Debtor determines to proceed with prosecuting the Williams Litigation utilizing funds not provided by Surety, the Surety shall be entitled to reimbursement of any costs advanced by Surety under this Agreement pro-rata with any costs incurred by Debtor and its estate prior to any other disposition of the proceeds of a recovery in the Williams Litigation, if any, obtained

from prosecution or settlement of the Williams Litigation. If a Funding Termination Event occurs, except with respect to pro-rata reimbursement of the Surety's litigation costs, the Surety shall be deemed to have released its first priority interest and liens in the Recovery (as defined below). For avoidance of doubt, the Surety shall at all times retain its rights under the Indemnity Agreement, subject only to the terms of this Agreement.

2. Reimbursement of Surety from Litigation Proceeds. Unless there is a Funding Termination Event where the terms of Paragraph 1 shall apply, in the event of any recovery by the Debtor as a result of a judgment in, or settlement of, the Williams Litigation (the "**Recovery**"), the Surety shall be reimbursed only from and to the extent of the Recovery for all amounts advanced by the Surety into the Litigation Fund (to the extent that such amounts exceed the \$2,500,000 maximum amount set forth above such excess shall have been consented to in writing by each of the Parties). The Surety shall be granted a first priority lien on only the Recovery and on no other assets or property of the Debtor, the Michigan Debtor, the Debtor's estate or the Michigan Debtor's estate, or the proceeds thereof, which lien shall be approved by the Bankruptcy Court as a condition of this Agreement. The reimbursement to Surety under this paragraph shall be made prior to any other disposition of the Recovery. In the event that there is no Recovery or the Recovery is less than the amount advanced in the Litigation Fund, the Surety shall have a general unsecured, non-priority claim against the Debtor for the unpaid amounts advanced under this Agreement.

3. Estate Sharing Arrangement and Related Matters: The Parties agree to the following sharing arrangement with respect to the disposition of the proceeds of a recovery in the Williams Litigation:

(a) Unless there is a Funding Termination Event where the terms of Paragraph 1 shall apply, the Surety shall receive reimbursement of all amounts advanced for the Williams Litigation in accordance with Paragraph 2 with the remaining proceeds after such reimbursement defined for purposes of this Agreement as the "**Net Proceeds.**"

(b) The Estate shall receive from the Net Proceeds the lesser of \$250,000 or the Net Proceeds ("**Estate Reimbursement**") to cover the costs incurred by the Estate for maintaining staff and other resources necessary for the litigation of the Williams Claims.

(c) In addition to the Estate Reimbursement, the Estate will receive one of the following mutually exclusive payments:

(1) Where the Net Proceeds are less than or equal to \$5 million, the Estate will receive 10% of the Net Proceeds inclusive of the Estate Reimbursement. For example, if the Net Proceeds are equal to \$3 million, the Estate will receive \$50,000 in addition to the Estate Reimbursement.

(2) Where the Net Proceeds are greater than \$5 million and less than or equal to \$10 million, the Estate will receive \$750,000 in addition to the Estate Reimbursement (\$1 million total).

(3) Where the Net Proceeds are greater than \$10 million, the Estate shall receive 10% of the Net Proceeds inclusive of the Estate Reimbursement. For example, if the Net Proceeds are equal to \$12 million, the Committee will receive \$950,000 in addition to the Estate Reimbursement.

(d) The Surety will share in any payments to the general unsecured creditor class on the basis of any allowed Surety unsecured, non-priority claim hereunder or under or in respect of the Bond and the Indemnity Agreement, to the extent such claim has been allowed pursuant to applicable bankruptcy law or by final, unstayed Bankruptcy Court order.

(e) The Surety shall provide each of the Debtor and the Committee with a monthly, confidential, detailed accounting of payments it makes to claimants under the Bond. The Surety shall use its reasonable, best efforts to make payments on each outstanding claim submitted under the Bond by no later than June 30, 2019 and to the extent permitted by applicable law, so long as such claimant has provided appropriate documentation to the Surety pertaining to its claim.

4. Cooperation and Settlement Authority. The Parties shall reasonably cooperate with respect to the Williams Litigation, including information that may be requested by any Party, and the Debtor shall keep the Surety and the Committee advised of all material matters relating to the Williams Litigation. The Debtor agrees to consult with the Surety and the Committee in advance of, and allow the Surety and the Committee to participate in, any settlement negotiations relating to the Williams Litigation, as well as any final disposition of the Williams Litigation. Additionally, upon request of the Surety or the Committee, subject to the Joint Defense Agreements, the Debtor shall provide a confidential update to the Surety and the Committee of the then current status of the Williams Litigation and shall consult with the Surety and the Committee regarding any litigation issues that may materially impact the success of the Williams Litigation.

(a) Nothing in this Agreement shall be deemed to preclude the Surety from (i) settling, for itself only, any claims made by subcontractors, suppliers, and assignees of subcontractors and suppliers under the Bond on terms acceptable to the Surety in its sole and absolute discretion, or (ii) obtaining from Williams a release of Surety's liability under the Bond on terms acceptable to Surety in its sole discretion.

(b) Nothing herein shall be deemed to waive any terms, conditions or limitations contained in the Bond, including, without limitation, the penal limit thereof and the Bond shall remain in full force and effect.

(c) Nothing in this Agreement shall be deemed to limit or alter the Debtor's exercise of its fiduciary duties or the Debtor's rights and defenses against the Surety or in any way related to the Bond or the Indemnity Agreement.

5. Joint Defense. The Parties agree that the terms of the Joint Defense Agreements shall govern all communications between the Parties with respect to this Agreement or the

Williams Litigation, ensuring that all communications between the Parties related to such proceedings are protected by all applicable privileges, including but not limited to the attorney-client privilege, the work product doctrine, the self-critical examination privilege, the trade secret doctrine, and the common interest privilege.

6. Governing Law. This Agreement is entered into in the State of Delaware and shall be governed by and construed in accordance with the laws of the State of Delaware. Any dispute by and between the Debtor and the Surety shall be adjudicated by the United States Bankruptcy Court for the District of Delaware.

7. Bankruptcy Court Approval. This Agreement is subject to approval by the Bankruptcy Court pursuant to a final, unstayed order of the Bankruptcy Court (the finality requirement may be waived by the Parties in writing), which is acceptable to the Parties.

IN WITNESS WHEREOF, this Agreement is executed by the parties on the day and date first set forth above.

/s/ Sean M. Beach

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

Sean M. Beach (No. 4070)  
Matthew B. Lunn (No. 4119)  
Robert F. Poppiti, Jr. (No. 5052)  
Tara C. Pakrouh (No. 6192)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

*Counsel to the Debtors*

/s/ Michael E. Collins

MANIER & HEROD, P.C.  
Sam H. Poteet Jr.  
Michael E. Collins  
1201 Demonbreun Street  
Suite 900  
Nashville, TN 37203  
Telephone: (615) 742-9350  
Facsimile: (615) 242-4203

*Counsel to Federal Insurance Company and  
Affiliated Sureties*

/s/ Michael B. Schaedle

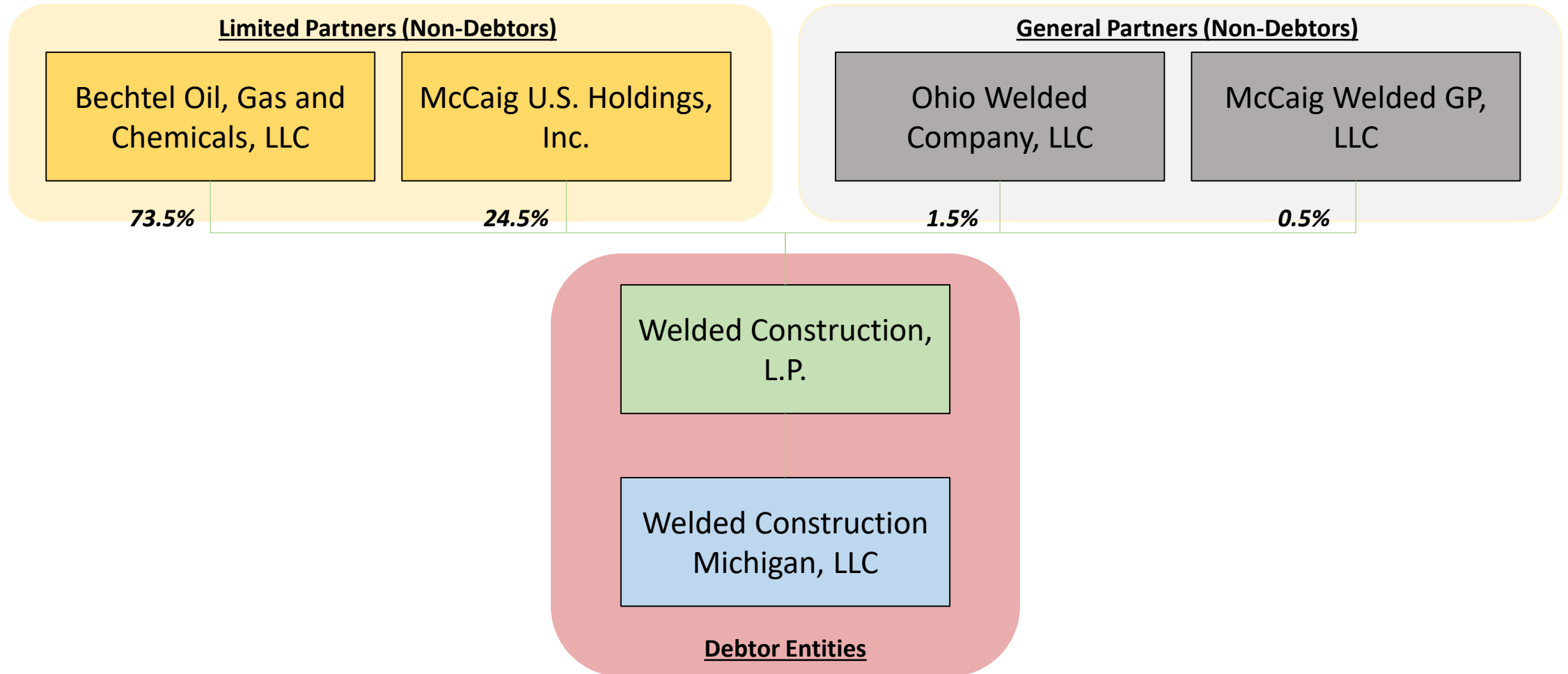
BLANK ROME LLP  
Josef W. Mintz (DE No. 5644)  
Jose F. Bibiloni (DE No. 6261)  
1201 Market Street, Suite 800  
Wilmington, DE 19801  
Telephone: (302) 425-6478  
Facsimile: (302) 425-6498  
Email: Mintz@BlankRome.com  
JBibiloni@BlankRome.com

Michael B. Schaedle (admitted *pro hac vice*)  
John E. Lucian (admitted *pro hac vice*)  
One Logan Square  
130 North 18th Street  
Philadelphia, PA 10103  
Telephone: (215) 569-5762  
Telephone: (215) 569-5442  
Email: Schaedle@BlankRome.com  
Lucian@BlankRome.com

*Counsel to the Official Committee of Unsecured  
Creditors of Welded Construction, L.P., et al.*

**EXHIBIT B TO DISCLOSURE STATEMENT**

**Organizational Chart**



**EXHIBIT C TO DISCLOSURE STATEMENT**

**Liquidation Analysis**



### **Hypothetical Liquidation Analysis**

As set forth in the Disclosure Statement, to assist the Bankruptcy Court in making the findings required under section 1129(a)(7) of the Bankruptcy Code in connection with confirmation of the Plan, the Debtors and their professional advisors have prepared the Liquidation Analysis. These notes and the Disclosure Statement should be referred to as part of, and reviewed in connection with, any review of the Liquidation Analysis. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan and the Disclosure Statement, as applicable.

The Liquidation Analysis has been prepared on the assumptions discussed herein and the Disclosure Statement and assumes that the Debtors hypothetically convert their Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code as of June 30, 2020 (the “**Projected Effective Date**”), which is the projected Effective Date of the Plan. The Liquidation Analysis illustrates that under chapter 7 of the Bankruptcy Code, holders of Claims and Interests will receive or retain property of a value no greater than the amount that such Holders will receive under the Plan.

The Plan proposes Distributions to Holders of Allowed Claims from the Debtors’ Estates on a consolidated basis and, therefore, the Liquidation Analysis has been prepared on a consolidated basis. For purposes of Distributions under the Plan, Allowed Claims against the Debtors’ Estates are entitled to a Distribution from the aggregate amount of Cash held by the Debtors and proceeds realized from the monetization of the Assets of the Debtors’ Estates, as provided for in the Plan. Under the consolidation proposed in the Plan, any Allowed Claim against the Debtors, and any guarantee thereof executed by the Debtors, and any joint or several liability of the Debtors, are deemed to have a single right to a Distribution under the Plan. Holders of Subordinated Claims and Interests will not receive any distribution under the Plan.

In preparing the Liquidation Analysis, the Debtors estimated Allowed Claims based upon the Schedules, the claims register for the Chapter 11 Cases, and a review of their books and records. To date, the Bankruptcy Court has not estimated or otherwise fixed the total amount of Allowed Claims. The estimate of the Allowed Claims set forth in the Liquidation Analysis should not be relied upon for any other purpose, including, without limitation, any determination of the value of any Distribution to be made on account of Allowed Claims under the Plan. The actual amount of Allowed Claims could be materially different from the amount of Claims estimated in the Liquidation Analysis.

The Debtors assumed that a chapter 7 trustee (the “**Trustee**”) would be appointed for the Debtors’ Estates, and that the Trustee would, among other things, retain professionals to assist the Trustee in connection with the Trustee’s duties. The Liquidation Analysis also includes estimates for Claims that could be asserted and Allowed if the Chapter 11 Cases are converted to chapter 7, including, without limitation, Administrative Claims related to the Trustee’s fees under section 326 of the Bankruptcy Code, fees for the Trustee’s professionals, and other wind-down costs.

Moreover, the Debtors assumed that the hypothetical conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code would render ineffective the Plan

Settlement, including the Plan Settlement Agreement and the Indemnity Agreement. As such, the Liquidation Analysis includes an estimate for certain Claims that would otherwise have been resolved under the Plan Settlement, as well as estimates for Claims that could be asserted and Allowed relating to fees for the Trustee's professionals to litigate such claims.

Although the Debtors consider the estimates and assumptions set forth herein to be reasonable under the circumstances, such estimates and assumptions are inherently subject to significant uncertainties and contingencies beyond the Debtors' control. Accordingly, the total amount of Allowed Claims is subject to adjustment. Further, there can be no assurance that the results set forth in the Liquidation Analysis would be realized if the Chapter 11 Cases were converted to chapter 7 of the Bankruptcy Code, and actual results, including, without limitation, distributions to Holders of Allowed Claims, could vary materially from those presented herein.

The Liquidation Analysis presents an estimated recovery for Holders of Allowed Claims in the event the Debtors' Chapter 11 Cases are converted to chapter 7 of the Bankruptcy Code, alongside an estimated recovery for Holders of Allowed Claims, by Class, under the Plan. The Liquidation Analysis is based solely on the Debtors' estimated distributions of Cash, and depends on the allowance or disallowance of certain Claims asserted against the Debtors, as set forth more fully in the Disclosure Statement. The Liquidation Analysis does not account for any potential proceeds from the Retained Causes of Action, and, as set forth more fully in the Disclosure Statement, the results of the Williams Litigation (which seeks substantial damages) or any other Retained Causes of Action commenced, or preserved, prior to the Effective Date, may not be as the Debtors predict, estimate or assert. Recoveries on Retained Causes of Action could materially change the actual recoveries to Holders of Surety Bond Claims and General Unsecured Claims.

THE STATEMENTS HEREIN AND IN THE LIQUIDATION ANALYSIS, INCLUDING ESTIMATES OF ALLOWED CLAIMS, WERE PREPARED SOLELY TO ASSIST HOLDERS OF ALLOWED CLAIMS IN DECIDING WHETHER TO ACCEPT THE PLAN AND THE BANKRUPTCY COURT IN MAKING THE FINDINGS REQUIRED UNDER SECTION 1129(A)(7) OF THE BANKRUPTCY CODE, AND THEY SHOULD NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

THE DEBTORS BELIEVE THAT ANY ANALYSIS OF A HYPOTHETICAL CONVERSION OF THE DEBTORS' CHAPTER 11 CASES TO CHAPTER 7 OF THE BANKRUPTCY CODE IS NECESSARILY SPECULATIVE. THERE ARE A NUMBER OF ESTIMATES AND ASSUMPTIONS UNDERLYING THE LIQUIDATION ANALYSIS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE DEBTORS, THEIR PROFESSIONALS, OR A CHAPTER 7 TRUSTEE. NEITHER THE LIQUIDATION ANALYSIS, NOR THE FINANCIAL INFORMATION AND UNDERLYING ASSUMPTIONS ON WHICH IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THE DEBTORS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THE ESTIMATES AND ASSUMPTIONS CONTAINED HEREIN, OR THE TRUSTEE'S ABILITY TO ACHIEVE FORECASTED

RESULTS. THERE CAN BE NO ASSURANCE THAT ACTUAL RESULTS WILL NOT VARY MATERIALLY FROM THE HYPOTHETICAL RESULTS PRESENTED IN THE LIQUIDATION ANALYSIS.

The Liquidation Analysis should be read in conjunction with, and is qualified in its entirety by, the Disclosure Statement and the following notes and assumptions:

1. *Cash and Cash Equivalents*

Cash as of the Projected Effective Date is \$25.9 million, as estimated by the Debtors in their most recent cash forecast.

2. *Chapter 7 Trustee Fees and Chapter 7 Professional Fees*

Trustee Fees. Fees to the Trustee are estimated to be 25% on the first \$5,000 of Cash distributed by the Trustee, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and 3% on any amount in excess of \$1,000,000, in accordance with section 326 of the Bankruptcy Code. Based on the approximately \$25.9 million in estimated Cash as of the projected Effective Date, the Debtors estimate that Trustee fees will be \$0.8 million.

Professional Fees. Pursuant to section 726 of the Bankruptcy Code, allowed administrative expenses incurred by the Trustee for the Trustee's professionals will be entitled to payment in full prior to any distribution to chapter 11 Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Claims. The Liquidation Analysis assumes that the Trustee's professionals will need additional time, among other things, to familiarize themselves with the Debtors' Estates. Additionally, the Liquidation Analysis assumes that the Plan Settlement would not become effective, and that, in turn, certain Claims settled under the Plan Settlement Agreement and Indemnity Agreement could be litigated. As such, costs for the Trustee's professionals in a chapter 7 case are estimated to be higher as compared to costs that would be incurred by the Debtors' professionals.

3. *Administrative Claims and Professional Fee Claims*

The Liquidation Analysis assumes that the Plan Settlement would not become effective, and that, in turn, certain Claims settled under the Plan Settlement Agreement and Indemnity Agreement would reenter the Administrative Claim pool.

Professional Fee Claims consist of chapter 11 professional fee accruals that are estimated to be outstanding as of the Projected Effective Date.

4. *Surety Bond Claims*

The aggregate amount of Allowed Surety Bond Claims is \$76.1 million. Since the Liquidation Analysis does not estimate the recoveries on Retained Causes of Action, the Allowed Surety Bond Claim is assumed to be an Allowed General Unsecured Claim pursuant to the Cooperation Agreement. The hypothetical chapter 7 scenario set forth in the Liquidation Analysis does not contemplate a separate class for Surety Bond Claims.

5. *Convenience Claims*

The hypothetical chapter 7 scenario set forth in the Liquidation Analysis does not contemplate a separate class for Convenience Claims. The Liquidation Analysis assumes that the benefits provided by a separate class for Convenience Claims would only be available if the Debtors' Chapter 11 Cases remain in chapter 11.

6. *General Unsecured Claims*

In the hypothetical chapter 7 scenario set forth in the Liquidation Analysis, General Unsecured Claims includes Surety Bond Claims and Convenience Claims, as separate classes are not contemplated in a conversion scenario.

Additionally, the Liquidation Analysis assumes that the Plan Settlement would not become effective, and that, in turn, certain Claims settled under the Plan Settlement Agreement and Indemnity Agreement would reenter the General Unsecured Claims pool.

# Liquidation Analysis

DISTRIBUTABLE VALUE				RECOVERY						
(\$ in millions)										
				Chapter 11	Chapter 7	Chapter 11	Chapter 7	Chapter 11	Chapter 7	
<b>Source of Funds:</b>										
Assets:										
Cash in Bank	\$	25.9	\$	25.9						
Partner Settlement		2.0		–						
Preference Claims		–		–						
Open AR		0.6		0.6						
Litigation Proceeds		–		–						
Total Assets	\$	28.5	\$	26.5						
<b>Use of Funds:</b>										
Liquidation Costs Post-Effective Date:										
Chapter 7 Trustee Fees		–		(0.8)						
Outside Professional Services		(1.4)		(2.9)						
Wind-down Costs		(0.6)		(0.6)						
Total Liquidation Costs		(2.0)		(4.3)						
<b>Estimated Value Available for Distribution to Creditors</b>	<b>\$</b>	<b>26.5</b>	<b>\$</b>	<b>22.2</b>						
<b>Claims by Class</b>										
<b>Value Available for Professional Fee Claims</b>										
Professional Fee Claims	\$	2.3	\$	2.3	100.0%	100.0%	\$	2.3	\$	2.3
<b>Value Available for Administrative Claims</b>										
Administrative Claims	\$	1.1	\$	1.4	100.0%	100.0%	\$	1.1	\$	1.4
<b>Value Available for Class 1: Secured Claims</b>										
Class 1: Secured Claims	\$	0.0	\$	0.0	100.0%	100.0%	\$	0.0	\$	0.0
<b>Value Available for Class 2: Priority Claim</b>										
Class 2: Priority Claim	\$	0.2	\$	0.2	100.0%	100.0%	\$	0.2	\$	0.2
<b>Value Available for Class 3, 4 and 5: General Unsecured</b>										
Class 3: Surety Bond Claim	\$	76.1			21.1%		\$	16.1		
Class 4: General Unsecured Claim		20.7		109.9	21.1%	16.7%		4.4		18.3
Class 5: Convenience Claim		5.0			50.0%			2.5		
Total General Unsecured	\$	101.8	\$	109.9	22.5%	16.7%	\$	22.9	\$	18.3
<b>Value Available for Class 6: Subordinated Claim</b>										
Class 6: Subordinated Claim	\$	–	\$	–	n.a.	n.a.	\$	–	\$	–
<b>Value Available for Class 7: Interests</b>										
Class 7: Interests	\$	–	\$	–	n.a.	n.a.	\$	–	\$	–
<b>Estimated Recovery</b>							\$	26.5	\$	22.2