IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WELDED CONSTRUCTION, L.P., et al., Debtors.	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
EARTH PIPELINE SERVICES, INC., Plaintiff, v. COLUMBIA GAS TRANSMISSION, LLC, WELDED CONSTRUCTION, L.P., Defendants.	Adv. Pro. No. 19-50274 (CSS) Adv. Pro. No. 19-50275 (CSS)

WELDED'S ANSWER TO AMENDED COMPLAINT

Welded Construction, L.P. ("Welded"), by its undersigned attorneys, files this *Answer to Amended Complaint* [Adv. Docket No. 23] (the "Amended Complaint") filed by Plaintiff Earth Pipeline Services, Inc. ("EPS"). Welded denies each and every allegation contained in the Amended Complaint except those specifically admitted herein. Welded further states as follows.

PARTIES

1. EPS is a corporation organized and existing under the laws of the State of Wyoming with its principal place of business located at 2949 S. Bridge Rd., Washington, Washington County, Pennsylvania 15301.

ANSWER: Admitted upon information and belief.

2. CGT is a limited liability company organized and existing under the laws of the State of Delaware with a place of business located at 700 Louisiana Street, Suite 700, Houston, TX 77002, and its DE registered agent located at Corporation Service Company, 251 Little Falls Drive, Wilmington, New Castle County, DE 19808.

ANSWER: Admitted upon information and belief.

3. Defendant, Welded Construction, L.P. ("Welded"), is a corporation organized and existing under the laws of the State of Delaware with offices located at 26933 Eckel Road, Perrysburg, Ohio 43551, and its DE registered agent located at Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, DE 19801.

ANSWER: Welded admits that it is organized and existing under the laws of the State of Delaware and its registered agent is Corporation Trust Company located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. By way of further response, Welded admits that it previously had offices at 26933 Eckel Road, Perrysburg, Ohio 43551.

FACTS

4. This dispute arises out of labor and material clearing work performed by EPS on Station Number 0+00 to Station Number 994+36 of Spread 1 of the Mountaineer Express Pipeline Project (the "Project") in West Virginia.

ANSWER: Welded admits that a dispute between EPS and Welded arose on the Mountaineer Express Pipeline Project ("Project") relating to EPS's performance on the Project.

5. The real property on which the Project was incorporated is situated from Mile Post 0.00 to Mile Post 18.83 in both Marshall and Wetzel Counties, West Virginia.

ANSWER: Welded is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and on that basis deny them.

6. Upon information and belief, CGT is the record owner and/or has a real property interest in approximately 99,436 linear feet of pipeline right-of-way, temporary workspaces, access roads, laydown yards and other areas located from Station Number 0+00 to Station Number 994+36 existing on such real property (the "Property"). CGT is also the owner of the Project and its subject pipeline which was constructed on and incorporated into the Property.

ANSWER: Admitted upon information and belief.

7. Upon information and belief, CGT entered into a written agreement with Welded as one of its prime contractors for the Project whereby Welded was to perform, among other things, the furnishing of materials and labor necessary for the all clearing and grubbing of all timber, brush and vegetation on the Property.

ANSWER: Welded admits that, pursuant to an agreement with CGT, Welded oversaw the construction of the Project as the general contractor.

8. On or about March 20, 2018, EPS entered into a written subcontract (the "Subcontract") with Welded for EPS to perform, among other things, mechanical clearing of the right-of-way, all work spaces, and all necessary roads of ingress and egress for the Project and to the Property. A true and correct copy of the Subcontract is attached hereto as **Exhibit 1** and incorporated herein by reference.

ANSWER: Welded admits that, according to two (2) subcontracts between Welded and EPS, EPS contracted to provide hand felling and mechanical clearing services on the Project. Welded further admits that one of the subcontracts is attached to the Amended Complaint as Exhibit 1. By way of further response, Welded states that the document referenced in Paragraph 8 is the best evidence of its contents.

9. Under the Subcontract, EPS was to be paid for its work on the Project in accordance with the agreed-upon hourly rates and unit prices which were proposed by EPS and accepted by Welded and directly incorporated and included in the Subcontract as Exhibits F and A.

ANSWER: Welded admits the subcontract with EPS included a provision for invoicing for work performed according to the terms. By way of further response, Welded states that the document referenced in Paragraph 9 is the best evidence of its contents.

10. Also under the Subcontract, EPS was to invoice Welded for such work in the manner set forth in Exhibit G to the Subcontract.

ANSWER: Welded admits the subcontract with EPS included a provision for invoicing for work performed according to the terms. By way of further response, Welded states that the document referenced in Paragraph 10 is the best evidence of its contents.

11. EPS' work under the Subcontract was performed as part of Welded's work for CGT under the prime contract and, therefore, for the sole benefit of CGT, and specifically for the Property and the Project. This is evidenced by, among other things, the Subcontract's language that "[t]he Work is a portion of the goods and services to be provided by [Welded] to Columbia Gas Transmission, LLC (OWNER) for Spread 1 of the Mountaineer Express Pipeline Project in Marshall and Wetzel Counties in West Virginia." See page 2 of the Subcontract.

ANSWER: Welded admits that it subcontracted with third parties to provide specific goods and/or services on the Project. The remaining allegations in Paragraph 11 constitute legal conclusions to which no response is required. To the extent a response is required, the remaining

allegations in Paragraph 11 are denied. By way of further response, Welded states that the document referenced in Paragraph 11 is the best evidence of its contents.

12. EPS fully performed the work for which it invoiced Welded and such work was authorized by Welded and CGT.

ANSWER: Denied.

13. Notwithstanding, on or about June 22, 2018, which was very close to the Project's completion, Welded informed EPS that it was terminating the Subcontract under the direction of CGT.

ANSWER: Welded admits that on June 22, 2018, EPS was terminated from the Project.

14. EPS disputed the termination of the Subcontract but nevertheless demobilized from the Project in compliance with the Subcontract.

ANSWER: Welded admits that EPS demobilized from the Project.

15. Prior to such termination, EPS had furnished all of the labor and materials required by the Subcontract and all changes thereto up through the termination date.

ANSWER: Denied.

16. EPS invoiced Welded for such labor and materials in the amount of $7,342,519.62 in accordance with the terms of the Subcontract.

ANSWER: Welded admits that EPS invoiced Welded for labor and materials. Welded denies that EPS's work was performed in accordance with the subcontract. By way of further response, Welded states that the document referenced in Paragraph 16 is the best evidence of its contents.

17. Pursuant to the Subcontract, payment was due to EPS within thirty (30) days of the date of such invoicing.

ANSWER: Welded admits the subcontract included a provision for invoicing for work performed according to its terms. By way of further response, Welded states that the document referenced in Paragraph 17 is the best evidence of its contents.

18. To date, despite demand for payment in full from Welded, EPS has only been paid $3,692,219.20 for its work, leaving a balance due and owing in the amount of **$3,650,300.42**, which includes retainage. A true and correct copy of all of EPS' unpaid invoices are attached hereto as **Exhibit 2** and incorporated herein by reference.

ANSWER: Welded admits that it paid EPS for some of its services and that certain invoices are attached to the Amended Complaint as Exhibit 2. Welded denies EPS is owed $3,650,300.42.

19. All conditions precedent to the EPS' right to payment in full of the balance due under the Subcontract have been satisfied.

ANSWER: Denied.

20. In order to protect its rights to payment for its completed work, on September 12, 2018, EPS filed two (2) separate Notices of Mechanics' Liens ("Mechanics' Liens") pursuant to West Virginia's Mechanics' Lien Law, W. Va. Code § 38-2-1 *et seq*., as amended (the "Lien Law"), in Marshall County and Wetzel County, West Virginia, which were the counties where the Project was located and where EPS performed the work for which it has not yet been paid. The former being filed with the Clerk of the Marshall County Commission, at Instrument No. 1445514, Mechanic's Lien Book 11 at page 574, in the amount of $3,650,300.42, and the latter being filed with the Clerk of the Wetzel County Commission, at Instrument No. 257004, Mechanic's Lien Book 6 at page 872, in the amount of $3,650,300.42. True and correct copies of the Mechanics' Liens are attached hereto as **Exhibit 3** and **Exhibit 4**, respectively, and incorporated herein by reference.

ANSWER: Admitted upon information and belief. By way of further response, Welded states that the documents referenced in Paragraph 20 are the best evidence of their content.

21. On October 22, 2018, Welded filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court").

ANSWER: Admitted.

22. On or about March 8, 2019, EPS filed Complaints to Foreclose the Mechanics' Liens in the Circuit Courts for Marshall County and Wetzel County, West Virginia.

ANSWER: Admitted upon information and belief.

23. On or about April 10, 2019, the Complaints to Foreclose the Mechanics' Liens were removed to the United States Bankruptcy Court for the Northern District of West Virginia.

ANSWER: Admitted upon information and belief.

24. On June 26, 2019, the United States District Court for the Northern District of West Virginia granted CGT's motion to transfer venue of the Plaintiff's Complaints to Foreclose the Mechanics' Liens to this Court.

ANSWER: Admitted upon information and belief.

25. On May 6, 2020, the Court entered a Scheduling Order that, inter alia, consolidated the Plaintiff's Complaints to Foreclose the Mechanics' Liens into a single adversary proceeding (Adv. Proc. No. 19-50274) included in Welded's bankruptcy proceeding.

ANSWER: Admitted. By way of further response, Welded states that the Scheduling Order referenced in Paragraph 25 is the best evidence of its contents.

Count I - Enforcement of Mechanics' Liens
(EPS v. CGT and Welded)

26. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25 above as if set forth fully herein.

ANSWER: Welded repeats and realleges its responses to each and every allegation contained in Paragraphs 1 through 25 as if fully set forth herein.

27. As a result of its ownership in the real property and pipeline subject to the mechanics' liens, CGT is an "owner" under the Lien Law.

ANSWER: The allegations in Paragraph 27 constitute legal conclusions to which no response is required.

28. CGT is also an incorporated company for purposes of Article 2-31 of the Lien Law.

ANSWER: The allegations in Paragraph 28 constitute legal conclusions to which no response is required.

29. Currently Welded is a nominal defendant only, whereby relief from the automatic stay was granted by the Court in its May 6, 2020 Scheduling Order to allow EPS to add Welded into the instant adversary proceeding as a necessary party under the Lien Law.

ANSWER: Welded admits the Court entered a Scheduling Order on May 6, 2020. By way of further response, Welded states that the Scheduling Order referenced in Paragraph 29 is the best evidence of its contents.

30. On or about June 20, 2018, EPS last supplied labor and/or materials to the Project and upon the Property.

ANSWER: Denied.

31. EPS' Mechanics' Liens relate to labor and materials provided by EPS as a Subcontractor to the Contractor for the Project and upon the Property for the benefit of CGT, as defined by Article 2-2 of the Lien Law.

ANSWER: The allegations in Paragraph 31 constitute legal conclusions to which no response is required.

32. EPS filed its Mechanics' Liens as described in paragraph No. 20 above, which is incorporated herein by reference.

ANSWER: Admitted upon information and belief.

33. EPS served notice of the filings of its Mechanics' Liens, and copies of its Mechanics' Liens, upon CGT's registered agent, Corporation Service Company, on or about September 25, 2018. True and correct copies of the Affidavit of Service of the Plaintiff's Mechanics' Liens upon CGT is attached hereto as Exhibit 5 and incorporated by reference herein.

ANSWER: Upon information and belief, Welded admits that EPS served notice of the filings of its Mechanics' Liens. By way of further answer, Welded states that the Affidavit of Service of the Plaintiff's Mechanics' Liens referenced in paragraph 33 is the best evidence of its contents.

34. Despite the performance of all conditions precedent by EPS, the aforesaid Mechanics' Liens remain unsatisfied, and EPS brings this action in accordance with Article 2-34 of the Lien Law to enforce its Mechanics' Liens.

ANSWER: Welded denies that EPS performed all conditions precedent. The remaining allegations in Paragraph 34 constitute legal conclusions to which no response is required.

35. The unpaid principal amount due and owing to EPS on account of the aforesaid Mechanics' Liens is $3,650,300.42.

ANSWER: Denied.

Count II – Unjust Enrichment
(EPS v. CGT)

36. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 35 above as if set forth fully herein.

ANSWER: Welded repeats and realleges its responses to each and every allegation contained in Paragraphs 1 through 35 as if fully set forth herein.

37. CGT, through its prime contract with Welded, through the Subcontract with EPS, requested that EPS furnish the above-described mechanical clearing work and materials for incorporation into the Property, and into the construction of the Project and/or the pipeline with the understanding that EPS expected payment for such work and materials.

ANSWER: The allegations in Paragraph 37 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 37 are denied.

38. The work and materials supplied by EPS to the Property enhanced its value, thereby resulting in substantial benefit to CGT.

ANSWER: The allegations in Paragraph 38 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 38 are denied.

39. Indeed, as set forth in CGT's very own pleading and in the Subcontract itself, EPS' work was "performed for the sole benefit of [CGT]" and the work is the "sole and exclusive property of [CGT]." See the Subcontract and CGT's Answer and Counterclaim.

ANSWER: The allegations in Paragraph 39 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 39 are denied.

40. Despite EPS' performance of the work and furnishing of materials to the Property, Project and/or pipeline, and CGT's enjoyment and use of same, EPS has still not been paid for such work.

ANSWER: The allegations in Paragraph 40 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 40 are denied.

41. EPS provided labor, equipment, materials and services to CGT at the request or direction of CGT, all as more fully set forth above.

ANSWER: The allegations in Paragraph 41 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 41 are denied.

42. EPS did not do so as a volunteer, but rather acted with a justifiable expectation of compensation for such quantities of labor, equipment, materials and services.

ANSWER: The allegations in Paragraph 42 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 42 are denied.

43. As the "Owner" of the Project, CGT continuously observed the benefits of EPS' work on the Project.

ANSWER: The allegations in Paragraph 43 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 43 are denied.

44. CGT accepted all of the work performed and completed by EPS on the Project.

ANSWER: The allegations in Paragraph 44 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 44 are denied.

45. CGT's retention of the benefits of EPS' work under such circumstances, without adequate compensation therefore, is unfair, unjust and inequitable.

ANSWER: The allegations in Paragraph 45 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 45 are denied.

46. As a result, CGT has been unjustly enriched by its retention of the benefits of EPS' work without paying adequate compensation on account thereof.

ANSWER: The allegations in Paragraph 46 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 46 are denied.

47. As a result of such unjust enrichment, EPS is entitled to be paid restitution by CGT for the labor, equipment, and services it provided to the Project and for which CGT has accepted and enjoyed the use thereof.

ANSWER: The allegations in Paragraph 47 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 47 are denied.

48. The reasonable value of the benefits conferred upon CGT by reason of EPS' work is equal to or greater than $3,650,300.42.

ANSWER: The allegations in Paragraph 48 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 48 are denied.

49. Accordingly, CGT is liable to EPS for damages in a principal sum not less than $3,650,300.42.

ANSWER: The allegations in Paragraph 49 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 49 are denied.

50. EPS has performed, satisfied and otherwise discharged all conditions precedent to its right to claim payment and to have judgment entered in its favor and against CGT in the amount of **$3,650,300.42**, plus prejudgment interest.

ANSWER: The allegations in Paragraph 50 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 50 are denied.

Count III – *Quantum Meruit*
(EPS v. CGT)

51. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 50 above as if set forth fully herein.

ANSWER: Welded repeats and realleges its responses to each and every allegation contained in Paragraphs 1 through 50 as if fully set forth herein.

52. At the request of Welded, and with the knowledge of CGT, EPS provided CGT, as "Owner" of the Project, and Welded, as a prime contractor, with valuable labor and material for the Project.

ANSWER: The allegations in Paragraph 52 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 52 are denied.

53. Such labor and material were furnished by EPS with expectation of payment and not as a volunteer.

ANSWER: The allegations in Paragraph 53 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 53 are denied.

54. EPS has placed CGT and Welded on notice of its claim and demanded payment therefor but no amounts have been received from either of them to reduce the unpaid balance.

ANSWER: The allegations in Paragraph 54 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 54 are denied.

55. Such labor and material provided a substantial benefit to CGT, which it has retained, but for which it has failed and refused to make payment to EPS.

ANSWER: The allegations in Paragraph 55 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 55 are denied.

56. Upon information and belief and by way of its filing for bankruptcy, Welded is unable to pay EPS for the balance of its work performed on the Project.

ANSWER: The allegations in Paragraph 56 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 56 are denied.

57. Should the Court conclude that there was no contract for any or all of the work performed by EPS and/or that Welded is unable to pay EPS for such work, EPS would have no adequate remedy at law, and it would be inequitable and unjust to allow CGT to retain the benefit that CGT received from the work performed by EPS, which has a reasonable value of at least $3,650,300.42, without making payment for said benefit.

ANSWER: The allegations in Paragraph 57 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 57 are denied.

58. Therefore, EPS is entitled to restitution in the form of *quantum meruit* for the reasonable value of the labor, equipment, and serviced that it performed and supplied for the Project for which it has not been paid in an amount equal to **$3,650,300.42**.

ANSWER: The allegations in Paragraph 58 are not directed to Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 58 are denied.

WHEREFORE, Welded demands that judgment be entered in its favor and against EPS together with an award of prejudgment interest, attorneys' fees, costs and any other further relief that this Court may deem appropriate.

AFFIRMATIVE DEFENSES

In addition to the foregoing responses to the numbered paragraphs of the Amended Complaint, Welded states the following affirmative defenses.

First Affirmative Defense

EPS's claims are barred, in whole or in part, due to EPS's own material breach and failure to substantially perform under the subcontracts with Welded.

Second Affirmative Defense

The relief sought in the Amended Complaint should be denied under the principles of waiver and/or estoppel.

Third Affirmative Defense

The relief sought in the Amended Complaint should be denied under the principles of payment and release.

RESERVATION OF DEFENSES

Welded expressly reserves, and does not waive, any additional defenses that may be disclosed or become apparent during discovery and further investigation of the relevant facts in this matter and any defenses raised in *Welded's Complaint and Objection to Proof of Claim Number 592 filed by Earth Pipeline Services, Inc.*

Signature Page Follows

Dated: June 4, 2020
Wilmington, Delaware

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