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

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| In re:<br><br>WELDED CONSTRUCTION, L.P., et al.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 18-12378 (CSS)<br><br>(Jointly Administered) |
| EARTH PIPELINE SERVICES, INC.,<br><br>Plaintiff,<br>v.<br><br>COLUMBIA GAS TRANSMISSION, LLC, WELDED CONSTRUCTION, L.P.,<br><br>Defendants. | <br><br>Adv. Pro. No. 19-50274 (CSS)<br>Adv. Pro. No. 19-50275 (CSS)<br><br>(Consolidated) |
| WELDED CONSTRUCTION, L.P.,<br><br>Plaintiff,<br>v.<br><br>EARTH PIPELINE SERVICES, INC.<br><br>Defendants. | <br><br>Adv. Proc. No. 20-50612 (CSS)<br>(Consolidated) |

**WELDED'S ANSWER TO SECOND AMENDED COMPLAINT**

Welded Construction, L.P. ("Welded"), by its undersigned attorneys, files this Answer to the *Second Amended Complaint* [Adv. Docket No. 55] (the "Second Amended Complaint") filed by Plaintiff Earth Pipeline Services, Inc. ("Earth"). Welded denies each and every allegation

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



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contained in the Amended Complaint except those specifically admitted herein. Welded further states as follows:

**PARTIES**

1. [Earth] 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], 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 [Earth] 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 Earth and Welded arose on the Mountaineer Express Pipeline Project ("Project") relating to Earth'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 denies 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 8, 2018, [Earth] entered into a written subcontract (the "Hand Felling Subcontract") with Welded for [Earth] to perform, among other things, certain hand felling of trees of the right-of-way, associated work spaces, and necessary roads of ingress and egress for the Project and to the Property. A true and correct copy of the Hand Felling Subcontract is attached hereto as **Exhibit 1** and incorporated herein by reference

**ANSWER**: Welded admits that, according to a written subcontract between Welded and Earth dated March 8, 2018, Earth contracted to provide hand felling services on the Project. Welded further admits that a complete copy of the subcontract referenced in Paragraph 8 is attached to the *Complaint and Objection to Proof of Claim Number 592 Filed by Earth Pipeline Services, Inc.* (the "Complaint") [Adv. 20-50612 Docket No. 1], as Exhibit A. By way of further response, Welded states that the document referenced in Paragraph 8, attached as Exhibit A to the Complaint, is the best evidence of its contents.

9. On or about March 20, 2018, [Earth] entered into a written subcontract (the "Mechanical Clearing Subcontract") with Welded for [Earth] to perform, among other things, certain mechanical clearing of the right-of-way, associated work spaces, and necessary roads of ingress and egress for the Project and to the Property. A true and correct copy of the Mechanical Clearing Subcontract is attached hereto as **Exhibit 2** and incorporated herein by reference. The

Hand Felling Subcontract and the Mechanical Clearing Subcontract shall hereinafter be jointly referred to as the "Subcontracts".

**ANSWER**: Welded admits that, according to a written subcontract between Welded and Earth dated March 20, 2018, Earth contracted to provide mechanical clearing services on the Project. Welded further admits that the subcontract referenced in Paragraph 9 is attached to the Complaint as Exhibit B. By way of further response, Welded states that the document referenced in Paragraph 9, attached as Exhibit B to the Complaint, is the best evidence of its contents.

10. Under the Subcontracts, [Earth] was to be paid for this work on the Project in accordance with the agreed-upon hourly rates and unit prices which were proposed by [Earth] and accepted by Welded and directly incorporated and included in the Subcontracts as Exhibits F and A.

**ANSWER**: Welded admits the subcontracts with Earth included a provision for invoicing for work performed according to the terms. By way of further response, Welded states that the documents referenced in Paragraph 10, attached as Exhibits A and B to the Complaint, is the best evidence of its contents.

11. Also under the Subcontracts, [Earth] was to invoice Welded for such work in the manner set forth in Exhibit G to the Subcontracts.

**ANSWER**: Welded admits the subcontracts with [Earth] included a provision for invoicing for work performed according to the terms. By way of further response, Welded states that the documents referenced in Paragraph 11, attached as Exhibits A and B to the Complaint, is the best evidence of its contents.

12. [Earth's] work under the Subcontracts 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 Subcontracts' 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."

**ANSWER**: Welded admits that it subcontracted with third parties to provide specific goods and/or services on the Project. The remaining allegations in Paragraph 12 constitute legal

conclusions to which no response is required. To the extent a response is required, the remaining allegations in Paragraph 12 are denied. By way of further response, Welded states that the documents referenced in Paragraph 12, attached as Exhibits A and B to the Complaint, is the best evidence of its contents.

13. [Earth] fully performed the work under the Subcontracts and additional work for which it invoiced Welded and such work was authorized by Welded and/or CGT.

**ANSWER**: Denied.

14. Notwithstanding, on or about June 22, 2018, which was very close to the Project's completion, Welded informed [Earth] that it was terminating the Subcontracts under the direction of CGT.

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

15. [Earth] disputed the termination of the Subcontracts but nevertheless demobilized from the Project in compliance with the Subcontracts.

**ANSWER**: Welded admits that Earth demobilized from the Project.

16. Prior to such termination, [Earth] had furnished all of the labor and materials required by the Subcontracts, all changes thereto, and the additional work up through the termination date.

**ANSWER**: Denied.

17. [Earth] invoiced Welded for such labor and materials in the amount of $7,342,519.62.

**ANSWER**: Welded admits that Earth invoiced Welded for labor and materials. Welded denies that Earth's work was performed in accordance with the subcontracts.

18. Payment was due to [Earth] within thirty (30) days of the date of such invoicing.

**ANSWER**: Welded admits the subcontracts included a provision for invoicing for work performed according to their terms.

19. To date, despite demand for payment in full from Welded, [Earth] 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 [Earth's] unpaid invoices are attached hereto as **Exhibit 3** and incorporated herein by reference.

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

20. All conditions precedent to the [Earth's] right to payment in full of the balance due under the Subcontracts, all changes thereto, and the additional work have been satisfied.

**ANSWER**: Denied.

21. In order to protect its rights to payment for its completed work, on September 12, 2018, [Earth] 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 [Earth] 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 4** and **Exhibit 5**, 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 21 are the best evidence of their contents.

22. 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.

23. On or about March 8, 2019, [Earth] 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.

24. 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.

25. 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.

26. 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 26 is the best evidence of its contents.

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

27. 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 the above paragraphs as if fully set forth herein.

28. 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 28 constitute legal conclusions to which no response is required.

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

**ANSWER**: The allegations in Paragraph 29 constitute legal conclusions to which no response is required.

30. 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 [Earth] 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 30 is the best evidence of its contents.

31. On or about June 20, 2018, [Earth] last supplied labor and/or materials to the Project and upon the Property.

**ANSWER**: Denied.

32. [Earth's] Mechanics' Liens relate to labor and materials provided by [Earth] 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 32 constitute legal conclusions to which no response is required.

33. [Earth] filed its Mechanics' Liens as described in paragraph No. 20 above, which is incorporated herein by reference.

**ANSWER**: Admitted upon information and belief that Paragraph 21[2] describes the Mechanics' Lien.

34. [Earth] 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 c/o Corporation Service Company is attached hereto as **Exhibit 5** and incorporated by reference herein.

**ANSWER**: Upon information and belief, Welded admits that Earth 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 34 is the best evidence of its contents.

[2] Paragraph 33 appears to contain a typographical error, referencing Paragraph 20 instead of Paragraph 21. This is likely due to the renumbering of paragraphs between the Amended Complaint and the Second Amended Complaint.

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

**ANSWER**: Welded denies that Earth performed all conditions precedent. The remaining allegations in Paragraph 35 constitute legal conclusions to which no response is required.

36. The unpaid principal amount due and owing to [Earth] on account of the aforesaid Mechanics' Liens is **$3,650,300.42**.

**ANSWER**: Denied.

**Count II – Unjust Enrichment**
**(Earth v. CGT)**

37. Plaintiff repeats and realleges only the allegations contained in paragraphs 1 through 6 above as if set forth fully herein.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required. To the extent a response is required, Welded repeats and realleges its responses to each and every allegation contained in the above paragraphs as if fully set forth herein.

38. As owner of the Project and the Property, the construction of the pipeline and the associated work performed and materials supplied in conjunction therewith on the Property resulted in an improvement to the Property and, therefore, an increase to the value of the Property, which is a direct to CGT.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response in required. To the extent a response is required, the allegations in Paragraph 38 constitute legal conclusions to which no response is required.

39. Included in that improvement was the performance of certain mechanical clearing and hand felling work, the delivery of certain materials, and associated work by [Earth] which CGT authorized and/or ordered directly to [Earth] through its Project representative, Welded, which was separate from the scope of work that [Earth] performed for Welded under their direct contracts, and for which [Earth] expected to be paid and CGT expected to pay [Earth].

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 39 are denied.

40. CGT never paid [Earth], Welded or any other entity for any of this certain mechanical clearing and hand felling work despite CGT having knowledge of the benefit of this work and accepting and appreciating the benefit of this work.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 40 are denied.

41. The relevant work is described below in Paragraph Nos. 42 through 46.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, Welded admits that Earth describes work in Paragraphs 42 through 46 of the Second Amended Complaint. To the extent Earth alleges this work as "relevant," this constitutes a legal conclusion to which no response is required.

42. The first item of work that [Earth] performed directly for the benefit of CGT occurred during the time period of May 31 through June 2 of 2018 after [Earth] was directed by CGT, through the communication of Mett Carroll of Welded on May 26, 2018, who indicated to [Earth] that the work was ordered by CGT, to haul eleven hundred and sixty-six (1,166) feet of timber logs from a certain part of the Property. The value of such work was $69,960.00 ($60 per foot x 1,166 feet) and such work was not part of any of scope of work included in the contracts between Welded and [Earth].

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 42 are denied.

43. Second, on May 14, 2018, for the purpose of a cultural survey benefiting CGT, CGT changed the usage designation of Access Road 7.8 to "Foot Traffic Only" which prevented [Earth] from being able to utilize the road for the transportation of its equipment, fuel, water, trucks and materials needed to perform certain mechanical clearing and PM burning work for three (3) days (May 15-17, 2018). The cost to [Earth] in lost production of manpower and equipment rental for this idle stand-by time was $223,938.12.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 43 are denied.

44. Third, just prior to CGT's ordering of termination of [Earth] from the Project, from June 15 through June 18 of 2018, CGT ordered a safety stand-down and [Earth] was directed by

CGT, through the communication of Mett Carroll of Welded, to place its equipment and laborers on stand-by so that the crews would be ready to return to work once the safety stand down was lifted. The cost to [Earth] in lost production of manpower and equipment rental for this idle stand down was $597,396.00.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 44 are denied.

45. Finally, due to CGT's change in the steep slope plan for the Project, [Earth] utilized additional manpower and equipment to perform certain mechanical clearing and hand felling work for CGT that was separate and independent from the work that was included in [Earth's] contracts with Welded on the Project.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 45 are denied.

46. More specifically, this additional manpower and equipment was necessary to meet the stringent work requirements related to the revised steep slope plan for the Project which was not included in the construction specifications for the Project provided to [Earth] prior to [Earth's] initial engagement on the project , but rather which was provided to [Earth] subsequent to the start of its work on the Project and, after undergoing several revisions, was finally titled "Steep Slope Work Plan MX00981-WEL-CO-PLN-0002" (the "Steep Slope Plan"). [Earth] performed this work in direct response to CGT's directives under the new Steep Slope Plan, which was provided to [Earth] through CGT's Project representative, Welded. The total value of this work was $2,250,627.00.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 46 are denied.

47. [Earth] invoiced CGT for all four (4) of these items of extra work through CGT's Project representative, Welded, and Welded has contested all four (4) of these claims taking the position that the claims are for work performed outside Welded's contracts with [Earth].

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 47 are denied.

48. CGT, through its Project representative, Welded, requested that [Earth] furnish or provide the above-described work items and materials for incorporation into the Property, and into the construction of the Project and/or the pipeline with the understanding that [Earth] expected payment for such work and materials.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 48 are denied.

49. This work and these materials supplied by [Earth] to the Property enhanced its value, thereby resulting in substantial benefit to CGT.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 49 are denied.

50. Despite [Earth's] performance of this work and the furnishing of these materials to the Property, Project and/or pipeline, and CGT's enjoyment and use of same, [Earth] has still not been paid for such work; nor has CGT paid anyone else for this work.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 50 are denied.

51. [Earth] provided this labor, equipment, materials and services to CGT at the request or direction of CGT, all as more fully set forth above.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 51 are denied.

52. [Earth] 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**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 52 are denied.

53. As the owner of the Project and the Property, CGT continuously observed the benefits of this work on the Project.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 53 are denied.

54. CGT accepted all of this work performed and completed by [Earth] on the Project.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 54 are denied.

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

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 55 are denied.

56. As a result, CGT has been unjustly enriched by its retention of the benefits of this work without paying adequate compensation to [Earth] on account thereof.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 56 are denied.

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

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 57 are denied.

58. The reasonable value of the benefits conferred upon CGT by reason of this work is equal to or greater than $3,141,921.12.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 58 are denied.

59. Accordingly, CGT is liable to [Earth] for damages in a principal sum not less than $3,141,921.12.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 59 are denied.

60. [Earth] 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 **$3,141,921.12**, plus prejudgment interest.

**ANSWER**: Count II is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 60 are denied.

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

61. Plaintiff repeats and realleges the allegations contained in paragraphs 37 through 60 above as if set forth fully herein.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, Welded repeats and realleges its responses to each and every allegation contained in the above paragraphs as if fully set forth herein.

62. At the request and with the knowledge of CGT, [Earth] provided CGT, as owner of the Project and the Property, with certain valuable labor and material for the Project.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 62 are denied.

63. Such certain labor and material were furnished by [Earth] with expectation of payment and not as a volunteer.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 63 are denied.

64. [Earth] has placed CGT on notice of its claims and demanded payment therefor but no amounts have been received from CGT to reduce the unpaid balance.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 64 are denied.

65. 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 [Earth] nor anyone else.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 65 are denied.

66. Welded denies that any of this work was within the scope of the contracts between [Earth] and Welded.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required.

To the extent a response is required, the allegations in Paragraph 66 are denied.

67. Because such work is disputed by Welded as not being included under its contracts with [Earth], [Earth] 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 this work performed by [Earth], which has a reasonable value of at least $3,141,921.12, without making payment for said benefit.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 67 are denied.

68. Therefore, [Earth] is entitled to restitution in the form of *quantum meruit* for the reasonable value of this labor, equipment, and services that it performed and supplied for the Project and for the benefit of CGT, and for which it has not been paid, in an amount equal to **$3,141,921.12**.

**ANSWER**: Count III is not directed toward Welded. Therefore, no response is required. To the extent a response is required, the allegations in Paragraph 68 are denied.

**WHEREFORE**, Welded demands that judgment be entered in its favor and against Earth 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 Second Amended Complaint, Welded states the following affirmative defenses.

### First Affirmative Defense

Earth's claims are barred, in whole or in part, due to Earth's own material breach and failure to substantially perform under the subcontracts, attached as Exhibits A and B to the Complaint, with Welded.

### Second Affirmative Defense

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

**Third Affirmative Defense**

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

**Fourth Affirmative Defense**

Earth's claims are barred, in whole or in part, based on the Court's December 1, 2020 Opinion [Adv. Docket No. 51].

**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 the Complaint.

*[Signature Page Follows]*

Dated: January 27, 2021
Wilmington, Delaware

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

*/s/ Kevin A. Guerke*

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