

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	CASE NO. 16-11209–HCM
CATARINA CONSTRUCTION, LLC	§	
	§	CHAPTER 11
	§	
DEBTOR.	§	

**DEBTOR’S EMERGENCY MOTION FOR INTERIM AND FINAL
AUTHORIZATION OF USE OF CASH COLLATERAL**

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Catarina Construction, LLC, the Debtor and Debtor-in-Possession (the “Debtor”), and files this, its Motion for Interim and Final Authorization of Use of Cash Collateral (the “Cash Collateral Motion”), and respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtor, a Texas limited liability company based in Austin, Texas, was formed on November 17, 2011. The Debtor provides general contracting, wet utilities (water and wastewater lines) construction services, dry utilities (electric and telephone), construction services, heavy construction, and site preparation work in central Texas. The key assets of the Debtor consist of heavy construction machinery including bulldozers, backhoes, motor graders, excavators, rollers, haul trucks, belly dumps, passenger trucks, vacuum trailers, water trucks and other construction vehicles. The Debtor has 4 projects underway in central Texas. Prior to the Petition Date, the Debtor also provided oilfield services work in south, east and west Texas, consisting of building oil field roads to drilling pad sites, construction of FRAC ponds, covering reserve pits, and general road

maintenance. The West Texas oilfield services work is different but utilizes the same heavy machinery. In August of 2016, Catarina formed a subsidiary, Master Oilfield Services, LLC (“MOS”), to perform oilfield services work, with Catarina to remain focused on the construction operations. MOS provides revenues to Catarina through the form of equipment rental payments and projected distributions on account of Catarina’s ownership interest.

2. Throughout 2016, the Debtor has experienced critical cash flow issues resulting from unexpected delays on projects and payments for its construction business. In addition, the Pre-Petition west Texas oilfield services operations suffered as oil prices suffered a well-publicized collapse.

3. Over the summer of 2016, the Debtor engaged Erik White and Bill Patterson of Bridgepoint Consulting to assist in developing a plan for restructuring its debt obligations. Mr. White now serves as the Chief Restructuring Officer of the Debtor.¹ Efforts were made prior to the filing of the bankruptcy case to negotiate payment plans with several key creditors. Ultimately, these pre-bankruptcy negotiations failed to yield a consensual payout agreement. In early October 2016, several of the Debtor’s secured creditors provided notice that they would begin to seize the Debtor’s heavy construction equipment. This bankruptcy case was filed to attempt to provide the Debtor with breathing room to propose a plan to pay its creditors in full.

4. Alleged cash collateral in this case consists of the cash and receivables generated from the Debtor’s business (the “Cash Collateral”). The Cash Collateral is proposed to be used for payment of normal, necessary, and appropriate expenses of the Debtor-in-Possession, including, but not limited to employee salaries, rent, taxes and

¹ An application to retain Mr. White and Bridgepoint as estate professionals will be filed with the Court.

insurance, professional fees and quarterly fees to the United States Trustee. Without the use of Cash Collateral, the Debtor will be unable to operate its business and manage its affairs. The anticipated revenue and the specific budget items are detailed on the attached Exhibit “A.”

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157, 1334 and the standing order of reference in the United States District Court for the Western District of Texas. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O). The statutory bases for the relief requested in this Motion are 11 U.S.C. §§ 105, 361, 363 and 507, and Rules 4001 and 9014 of the Bankruptcy Rules.

FACTUAL BACKGROUND

6. The Debtor filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code on October 17, 2016 (the “Petition Date”). The Debtor is the Debtor-in-Possession in this case pursuant to Bankruptcy Code sections 1107(a) and 1108. There has been no committee of unsecured creditors appointed to date. The 341 Meeting of Creditors is set for November 15, 2016 at 10:30 a.m. The Proof of Claim deadline is February 13, 2017.

7. Several creditors are believed to or may assert a lien on the Cash Collateral. These include: People’s United Equipment Finance Corporation, Plains Capital Bank, Caterpillar Financial Services Corporation, and Mazon Associates, Inc., Construction Equipment Company, Commercial Credit Group, Inc., and Holt Cat.² In addition, several

² At this time, the Debtor reserves all rights as to the extent, priority, and perfection of any liens on Cash Collateral and/or any other property of the bankruptcy estate.

of the Debtor's subcontractors may claim a collateral interest in the Cash Collateral or that payments due to the Debtor are construction trust funds under Texas Property Code section 162.001. These subcontractors include Lockhart Excavation, LLC, Forterra, Custom Trench, Inc., Melendrez Trucking, LLC and United Rentals. In order to give creditors and parties in interest an opportunity to review any lien or trust fund claims, the Debtor will not seek to pay those subcontractors on an emergency basis, but will request such payments to be approved in connection with a subsequent interim order or within the final order on this Cash Collateral Motion.

RELIEF REQUESTED

A. Use of Cash Collateral

8. Pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 1007(d), the Debtor seeks Interim and Final Orders of the Bankruptcy Court authorizing the use of Cash Collateral. The expenses the Debtor proposes to pay from the Cash Collateral are necessary and important for the protection of the bankruptcy estate. Without access to and use of the Cash Collateral, the Debtor will be unable to meet its obligations and to properly administer the estate. Attached as Exhibit "A" to this Motion is a detailed budget showing the proposed expenses to be funded by the Debtor (the "Budget"). The Budget shows expenses and income for a three-week period. The Debtor requests authority to use cash and cash proceeds on the condition all such expenditures shall be consistent with the Budget. The Debtor requests that expenditures or accruals may vary no more than ten percent (10%) on any single line item in the Budget (so long as total disbursements and accruals do not exceed, the amounts set forth in the Budget plus 5% variance) without seeking Court approval.

9. A 90-day budget is being finalized and will be served on all creditors and parties in interest as soon as possible, but in no event on less than 14-days' notice of the final hearing on the Motion.

10. Bankruptcy Rule 4001(b) requires a final hearing on a motion for authorization to use cash collateral to be held on no less than 14-days' notice. The Rule permits the Court to conduct a preliminary hearing, before the expiration of the 14-day notice period, to consider authorizing the Debtor to use that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending the final hearing.

11. The three-week Budget includes only those items necessary to avoid such immediate and irreparable harm. The 90-day budget shall include those items that are properly considered at a final hearing.

12. The Debtor reserves the right to seek approval of additional interim periods beyond the three-week period in the Budget and/or to seek to extend the budget beyond the 90-day period included in the Budget.

B. Adequate Protection

13. As adequate protection for the use of Cash Collateral, all secured creditors will retain their liens, if any, and will be granted an administrative claim and replacement liens upon any post-petition receivables, and other proceeds of their pre-petition collateral, to the same extent and priority in such collateral as existed as of the Petition Date, if any, to the extent that the proposed used of Cash Collateral results in a decrease, if any, in the value of the secured creditors' alleged collateral interests. The Debtor will provide twice-monthly statements to all creditors claiming an interest in the Cash

Collateral. In addition, the Debtor will provide budgets and a comparison of budget-to-actual figures throughout the time of any use of alleged Cash Collateral. The Debtor reserves all rights as to the amount, validity and priority of each secured creditor's alleged liens and claims. No liens shall be or are proposed to be granted upon any chapter 5 causes of action or commercial tort claims of the Debtor.

14. Reference is made to 11 U.S.C. § 361 for the establishment of the forms of adequate protection. The grant of a replacement lien such as proposed herein to the extent that the use of Cash Collateral results in a decrease in the value of an entity's interest in such property is specifically contemplated by the Bankruptcy Code and is appropriate in this case under the circumstances.

15. Without the use of the Cash Collateral, the Debtor would have no means to pay its expenses, hindering its ability to formulate and have confirmed a plan of reorganization.

WHEREFORE, the Debtor prays that the Court:

- A. Authorize Debtor to use Cash Collateral on an interim basis pending a final hearing consistent with the Budget;
- B. Authorize the Debtor to provide the Adequate Protection proposed herein;
- C. Authorize the Debtor to use Cash Collateral on a final basis as set forth herein consistent with a 90-day budget; and
- D. Grant such other and further relief as the Debtor maybe justly entitled.

Date: October 21, 2016

Respectfully submitted,

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Austin, Texas 78702
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By: /s/ Kell C. Mercer
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PROPOSED ATTORNEY FOR CATARINA
CONSTRUCTION, LLC

CERTIFICATE OF SERVICE

I hereby certify that October 21, 2016, a true and correct copy of the foregoing pleading was served via this Courts ECF/CM notification system to all parties registered to receive just notice, and via first class mail and/or fax to the parties listed below and parties on the attached Service List.

Peoples United Equipment Finance Corp.
1300 Post Oak Blvd., Suite 1300
Houston, Texas 77056

PlainsCapital Bank
919 Congress Ave., Suite 600
Austin, Texas 78701

Mazon Associates, Inc.
P.O. Box 166858
Irving, Texas 75016-6858

Caterpillar Financial Services Corporation
2120 West End Avenue
Nashville, TN 37203

TKO Equipment Co.
P.O. Box 153389
Irving, Texas 75015

Holt Cat
P.O. Box 207916
San Antonio, Texas 78220-7916

Commercial Credit Group, Inc.
2135 City Gate Lane, Suite 440
Naperville, IL 60563

Construction Equipment Company
18650 SW Pacific Highway
Tualatin, OR 97062

RDO Equipment Co.
700 7th St. South
Fargo, ND 58103

Komatsu Financial Limited Partnership
1701 W. Golf Road, Suite 1-300
Rolling Meadows, IL 60008

Waukesha-Pearce Industries, Inc.
12320 S. Main Street
Houston, TX 77030

United Rentals
PO Box 840514
Dallas, TX 75284-0514

Lockhart Excavation LLC
101 Waverley Spire Court
Austin, TX 78738

Forterra
PO Box 842481
Dallas, TX 75284-2481

Melendrez Trucking, LLC
11608 Moore Road
Austin, Texas 78719

Custom Trench Inc
8700 Manchaca Road, STE 105
Austin, TX 78748

/s/ Kell C. Mercer
Kell C. Mercer