

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
(LUFKIN DIVISION)**

In re:)	
)	JOINTLY ADMINISTERED
TEXAS PELLETS, INC. ¹)	under Case No. 16-90126
)	
Debtors.)	Chapter 11
)	

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE
BANKRUPTCY CODE FOR AN ORDER AUTHORIZING THE DEBTORS TO ENTER
INTO AMENDED MANAGEMENT SERVICES AGREEMENT WITH GERMAN
PELLETS GMBH AND SERVICES AGREEMENT
WITH WAILUA TECHNOLOGY, INC.**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

Texas Pellets, Inc. ("TPI") and German Pellets Texas, LLC ("GPTX"), the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby move (the "Motion") this Court for entry of an order, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), authorizing the Debtors to enter into an amended Management Services Agreement with German Pellets, GmbH,

¹ The jointly-administered Chapter 11 Debtors, along with the last four digits of each Debtor's federal tax identification number, are Texas Pellets, Inc. (3478) and German Pellets Texas, LLC (9084). The location of the Debtors' corporate headquarters and service address for the jointly-administered Debtors is: 164 CR 1040, Woodville, TX 75979.

and further to enter into a services agreement with Wailua Technology, Inc. (“Wailua”). In support of this Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. As the Court is aware, during the pendency of this case, management services for the Debtors have been provided by approximately 25 personnel (“German Pellets GmbH Personnel”) of German Pellets GmbH, another company within the “German Pellets” family of companies. Information technology, accounting and logistics support to the Debtors have also been provided through German Pellets GmbH. The current team of German Pellets GmbH Personnel providing services to the Debtors was assembled by Frank Ledermüller (Chief Executive Officer) and Norman Dittmar (Chief Financial Officer) to specifically address their view of the business needs of the Debtors. The German Pellets GmbH Personnel have continued to provide services pursuant to orders from this Court allowing them to continue to provide management services. The German Pellets GmbH Personnel have remained in place post-petition pursuant to orders from this Court allowing them to continue to provide management services pursuant to a Management Services Agreement (“MSA”) continuing through October 1, 2016. (Docs. 147, 189).

2. Since the approval of the MSA, Debtors’ Chief Restructuring Officer (“CRO”) has led a request for proposal process in order to market test the MSA and ensure Debtors could determine the most efficient management structure. The CRO issued an RFP and received and evaluated several proposals in a competitive process. As a result of that process, Debtors now ask the Court to approve the arrangement that, in the business judgment of the Debtors, is the most cost effective and advantageous for the Debtors. That arrangement is an amendment to the MSA that will reduce the amount of funding paid to German Pellets GmbH and extend the term

of the MSA through the end of the debtor-in-possession financing term. Then, to migrate certain technology and accounting functions and achieve greater cost savings under the MSA, Debtors ask the Court to approve a services agreement with Wailua, a Houston-based company, to provide IT and computer support and services. This combined approach will provide cost savings to the estate while also retaining the institutional knowledge, data, and personnel necessary to maintain Debtors' operations and support the continued reorganization process.

BACKGROUND

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue of these cases and this Application is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (as amended) (the "Bankruptcy Code").

6. On April 30, 2016 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Texas (the "Court") commencing the above-captioned chapter 11 cases. The factual background regarding the Debtors, including their business operations, capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Bryan Davis Declaration, filed on May 2, 2016 and fully incorporated by reference. (Doc. 16).

7. The Debtors have continued in possession of their properties and have continued to operate and maintain their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No trustee or examiner has been appointed in these chapter 11 cases. An official committee of unsecured creditors has been appointed.

RELIEF REQUESTED

9. By this Motion, the Debtors request entry of an order (i) amending the MSA with German Pellets and (ii) authorizing the Debtors to enter into and perform in accordance with Services Agreement with Wailua pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

A. MSA Amendment

10. Debtors' current management, including GPTX officers Frank Ledermüller and Norman Dittmar, have extensive institutional knowledge based on their involvement with the Debtors' wood pellets facility since its inception. Under the MSA, German Pellets provides a variety of functions including supporting Debtors' legal counsel, providing needed information and background to the CRO, and supporting shipping, trading, logistics, and wood pellets sustainability functions. Under the current MSA, German Pellets receives \$38,500 per week and up to \$20,000 in monthly expense reimbursements for carrying out these functions. The current MSA expires October 1, 2016.

11. Under the amended MSA, German Pellets will continue to provide their industry experience and support shipping, trading, logistics, and sustainability functions. German Pellets will also continue to support the bankruptcy process and provide the records and information necessary for Debtors' reorganization. As a result of the migration of a variety of functions under the Wailua Services Agreement, Debtors propose amending the MSA to provide \$15,000 per

week to German Pellets (a reduction of \$23,500 per week) and a monthly expense reimbursement of no more than \$15,000 per month (a reduction of \$13,500 per month).

12. Finally, the current MSA will remain in place under its existing terms for the month of October in order to facilitate an orderly transition. The amended MSA as described in this section will officially commence effective as of November 1, 2016.

B. Wailua Services Agreement

13. A copy of the Services Agreement with Wailua is attached hereto as **Exhibit A**. Wailua will generally provide IT support for the wood pellets manufacturing facility and Port Arthur port facility. The Wailua Services Agreement includes one-time, estimated labor costs of \$80,250 to effectuate a carve-out to a standalone, IT platform, along with one-time hardware and software purchases of approximately \$54,957.57. Additionally, Wailua will provide on-going IT support on for a fee of \$8,300 per month.

14. The Debtors submit that such cost is reasonable given the scope of services provided and further note that the Wailua technology efforts will afford Debtors significant savings over the life of this case by allowing the cost reductions on the German Pellets MSA

15. The Debtors wish to note that the decision to enter into the arrangements proposed herein was made by the CRO exercising his business judgment.²

BASIS FOR RELIEF REQUESTED

16. The Debtors' decision to enter into the Services Agreements should be approved pursuant to sections 363 and 105(a) of the Bankruptcy Code as it is supported by the Debtors' sound business judgment and is in the best interests of the Debtors' estates. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession to use its property other than in the ordinary

² The other officers Frank Ledermüller (Chief Executive Officer) and Norman Dittmar (Chief Financial Officer) do not oppose the relief requested herein and are fully cooperating and participating in the amended framework as set forth herein.

course of business after notice and a hearing. In addition, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

17. The proposed use, sale, or lease of property of the estate may be approved under Bankruptcy Code section 363(b) if it is supported by a sound business justification. See Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); see also In re Montgomery Ward, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions"). In fact, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

18. Moreover, pursuant to section 105 of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of a debtor's assets. See, e.g., In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986).

19. Authorizing the Debtors to amend the MSA and to enter into and perform in accordance with the Wailua Services Agreement is reasonable, in the best interests of the Debtors' estates, and will accomplish a sound business purpose. Accordingly, based on the foregoing, the Debtors submit that entry into the Wailua Services Agreement is supported by sound business judgment. Moreover, Debtors need the institutional knowledge of the German Pellets Management Personnel to allow the continued smooth operations of the wood pellets

facility and to continue to support the sales, trading, sustainability, and reorganization tasks. The amendment to the MSA to allow their continued support is further in the best interest of the Debtors' estate.

20. The relief requested in this Motion shall be subject to the terms and conditions of that certain Final Order (1) Authorizing Debtors in Possession to Obtain Postpetition Financing; (2) Providing Adequate Protection; and (3) Granting Liens, Security Interests and Superpriority Claims (the "Final Order," including any amendments thereto), including but not limited to that payments shall be made in accordance with the Budget (as defined in the Final Order).

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request entry of an order authorizing the Debtors to enter into and perform in accordance with the Services Agreements, and granting the Debtors such other and further relief as is necessary or appropriate.

Dated: September 30, 2016.

Respectfully submitted,

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**COUNSEL FOR TEXAS PELLETS, INC. AND
GERMAN PELLETS TEXAS, LLC**

CERTIFICATE OF SERVICE

I hereby caused a true and correct copy of the foregoing *Motion* to be served on September 30, 2016 upon the parties listed on the attached Combined Master Service List via ECF Notification or (for those parties who do not receive ECF notification) by United States regular mail, postage prepaid.

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STATEMENT OF WORK

FOR

German Pellets Texas LLC. ("GPTX")

BACKGROUND

This Statement of Work outlines a proposal Wailua Technology, Inc. ("Wailua") will provide to GPTX, as to a computer network infrastructure. Services shall be performed in accordance with the terms and conditions of this Statement of Work.

EXECUTIVE SUMMARY

GPTX will engage Wailua to provide and install all Information Technology (IT) equipment and supporting software in order to replace current system. New system will be run and managed locally and independently by Wailua on behalf of GPTX. Wailua will provide a list of each item needed for implementation. The system will be partitioned by two separate networks. Per GPTX request, Wailua has provided proposals for both an on premise and off premise ("cloud") based solutions. This SOW presents the cloud based solution elected by GPTX.

Additionally, Wailua will provide ongoing IT support for Woodville and Port Arthur locations for all non Control System IT related equipment as well as monitor all essential servers for \$8,300.00 per month beginning with implementation of new system. Migration on premise email would be migrated to Microsoft Cloud.

EXHIBIT "A"

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TASK DESCRIPTION		Estimated Hours
Server and Network Design/Implementation		287
Desktop Configuration and Implementation (20 Units)		42
Configuration of ESX and VSphere		80
Implementation of Historical SAP data repository		30
Config of DR and backup server		40
Email migration		60
ESTIMATED HOURS		535
TOTAL ESTIMATED LABOR COST (\$150.00/hour)		\$80,250.00
Hardware and Software		Cost
Description	Quantity	
POPA Control system PLC Sustaining *	1	\$12,000.00
Microsoft Azure Cloud Services 8TB storage 1VM Windows 12 months **	1	\$0
HP DL360G8 Refurb Perf XEON Server	1	\$4,981.24
HP Storever Ultrium 20TB/50TB	1	\$8,405.00
HP Server HDD 300GB storage	3	\$2,122.95
Cisco Router	1	\$2,420.00
MS Windows Server 2012	3	\$2,037.00
VmWare Vsphere Essential plus/support	1	\$7,842.12
Cisco 24 Port Switch	2	\$4,248.14
Office365 cloud Email 20 users for 1-year	1	\$3,480.00
Veeam VM Backup software	1	\$2,315.15
APC SmartUPS 2200VA 120v	1	\$1,605.97
Cable drops and rack	10	\$3,500.00
Total Hardware and Software		\$54,957.57
Total	(Taxes not included)	\$135,207.57

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* Wailua has not received the full access necessary to evaluate this line item. It is possible the cost could be significantly less once implementation begins, although it's possible the cost could be greater than \$12,000, the estimate provided is intended to be conservative.

**GPTX can elect to pre-pay 12 months of service or pay month to month. The full 12 month pre-pay option is \$12,480.48. Wailua will provide the month to month option for cost comparison.

TERMS AND CONDITIONS

The engagement must be delivered in consecutive 5-day increments. All activities, if performed at the customer location, will be performed in forty (40) hours per week on consecutive days, except weekends and holidays. Wailua defines normal working hours to be between the hours of 8:00 AM and 5:00 PM Monday through Friday. If the client requests Wailua to work outside of normal working hours or in excess of 40 hours in any given week, a change control will be invoked to authorize Wailua to work extended hours and invoice the client accordingly at 1.5 times the equivalent hourly rate. Wailua may elect to work more than eight hours in a workday and may elect to work four extended workdays in a calendar week to minimize the effects of travel on the Wailua resource.

Wailua will submit invoices outlining the number of hours and describing in detail the services performed. GPTX, will pay invoices within fifteen (15) days of receipt of accurate invoices. If additional services are warranted or required, Wailua will initiate change request procedures to seek approval by GPTX. GPTX, will not hire anyone employed by Wailua without compensation common to industry for period of one year after end of this agreement. 50% deposit required upon approval of SOW.

Both Wailua and GPTX acknowledge that this SOW is subject to bankruptcy court authorization.

CONFIDENTIALITY STATEMENT

Wailua, its employees, agents or subcontractors shall not disclose, publish or authorize others to publish any confidential information obtained from the records of the client or prepared by Wailua for use by the client. Company warrants that it will not sell, loan, share, or other-wise use any of the clients' data with any third party whatsoever except by prior written approval by the client.

RATES

For project work of this nature, Wailua does not negotiate fixed-fee contracts. Our contracts are for time and materials. The hourly rate for billable services is \$150.00 per hour. The time frames outlined in this proposal are a best estimate and does not constitute guarantees. Wailua will notify GPTX, promptly if it becomes evident that the estimated time will not be sufficient to produce the deliverables.

Statement of Work Approved by:

German Pellets Texas, LLC.

Wailua Technology, Inc.

BY: _____
Signature

BY: _____
Signature

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Printed Name: Bryan M. Gaston

Printed Name: R. Roy Castillo

Title: CRO

Title: President

Date: _____

Date: _____