

Holly Roark, ISB No. 7143
ROARK LAW OFFICES
950 Bannock St. Ste. 1100
Boise, ID 83702
Telephone: (208) 536-638
Facsimile: (310) 553-2601
Email: holly@roarklawboise.com

Proposed Counsel for Debtor/Debtor-in-possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re:	Case No. 16-40960-JPD
TUGG TRUCKING INC.,	Chapter 11
Debtor and Debtor in Possession.	

EMERGENCY MOTION FOR USE OF CASH COLLATERAL

COMES NOW the Debtor and Debtor-In-Possession and hereby moves pursuant to 11 USC § 363, Federal Rule of Bankruptcy Procedure 4001(b), and Local Bankruptcy Rule 4001.1 for authorization to use cash collateral.

This Motion is based upon the concurrently filed Declaration of Staci Sneddon and upon the following:

1. **DEBTOR.** The Debtor is an Idaho corporation formed on June 15, 2011, and filed for Chapter 11 bankruptcy on November 12, 2016. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in this Chapter 11 case. The Debtor is in the business of hauling crude oil in several states, including North Dakota.

2. **BACKGROUND.** What led to the Debtor filing Chapter 11 was litigation with the State of North Dakota's Workforce Safety & Insurance ("WSI") over whether the Debtor's laborers, specifically drivers, were employees or independent contractors during a

several year period in which the Debtor operated in North Dakota. Having found that the laborers were “employees”, the WSI ultimately obtained a judgment in the sum of \$218,155.81¹ against the Debtor and the principals of the Debtor, Jeremy and Staci Sneddon on August 5, 2016 (“Judgment”) for past premiums due. Although the Debtor works in multiple states, the inability to obtain ongoing workers’ compensation insurance in North Dakota² absent the full payment of the Judgment created a snowball effect where the Debtor defaulted on multiple equipment loans and leases. Having worked out a stipulation with the WSI to obtain ongoing insurance, the Debtor now has an ample opportunity to reorganize and pay its creditors, but it requires the use of cash collateral to consummate the agreement with WSI, and also to pay its workers, its shop rent or mortgage, and pay ongoing operating expenses.

3. EMPLOYEES AND INDEPENDENT OPERATORS. Tugg Trucking Inc. currently employs 5 individuals in addition to the owners, Jeremy and Staci Sneddon.³

4. PREPETITION CAPITAL STRUCTURE. As of the Petition Date, the Debtor’s funded debt consists of a \$50,000 senior secured asset-based revolving facility with approximately \$50,100.82 in principal outstanding as of the Petition Date made between the Debtor and Washington Federal “Prepetition Senior Lender”; and (ii) a \$150,000 junior secured asset-based loan with approximately \$109,201.61 in principal outstanding as of the Petition Date made between the Debtor and WebBank/ CAN Capital Asset Servicing, Inc. “Prepetition Junior Lender”. The senior secured line of credit and the junior secured loan are both secured by substantially all of the assets of the Debtor.

5. AMOUNT & SOURCE. The Debtor is currently operating as Debtor-in-Possession. The Debtor respectfully requests authorization to use cash collateral on an interim basis as set forth in the October, November, and December columns of the Interim budget for

¹ The judgment is subject to reduction based on actual payrolls for a certain time period, and is also subject to offset by any payments made for October 2016. The Sneddons reserve the right individually to dispute the amount of the Judgment, the priority, and the dischargeability of the Judgment.

² North Dakota is a monopoly state with respect to worker’s compensation insurance, and therefore, the Debtor is unable to obtain private insurance to cover its operations in North Dakota.

³ Whether an individual is an employee or an independent operator can vary by state law.

the period from October 12, 2016, through December 31, 2016, and pending the final hearing requested to be in January 2017, (Exhibit “B”). At the final hearing in January 2017, the Debtor will respectfully request authorization to use cash collateral as set forth in the remainder of the 12 month budget (Exhibit “A”).

6. IDENTITY OF ALL ENTITIES WITH ALLEGED SECURED INTERESTS.⁴ To the best of Debtor’s knowledge, information and belief, the following parties are all the entities who may have alleged secured interests in cash collateral:

- a. Washington Federal, with an approximate debt of \$50,100.82 as of the date of the filing of the Petition; and
- b. WebBank c/o CAN Capital Asset Servicing, with an approximate debt of \$109,201.61, as of the date of the filing of the Petition;

To the best of the Debtor’s knowledge, information and belief, the following parties are all secured creditors but do not have security interests in cash collateral:

- a. Signature Financial LLC
- b. Second City Leasing, LLC;
- c. Hitachi Capital America Corp.;
- d. Wingfoot Commercial Tire;
- e. Peterbilt;
- f. General Electric Capital Corporation;
- g. Enerstar Rentals and Services;
- h. Linda Hoge;
- i. Direct Capital;
- j. Ally Financial;
- k. Transportation Alliance Bank; and
- l. Wells Fargo Equipment Finance, Inc.

⁴ Debtor reserves all rights to contest the validity of any and all liens under applicable state law and the United States Bankruptcy Code.

7. Based upon the UCC-1 Filings with the Idaho Secretary of State, the Debtor is informed and believes the Washington Federal is in first position with respect to cash collateral, and CAN Capital is in second position, and that the value of Washington Federal's remaining collateral (cash in accounts, receivables, and all other assets with equity) is such that they are fully secured and there exists an interest remaining to partially secure CAN Capital. The Debtor is informed and believes that the value of CAN Capital's remaining collateral is such that there does not exist an interest for other creditors who may assert an interest in cash and receivables.

8. Stated differently, Washington Federal is owed approximately \$50,100.82, and the total equity in assets on the date of filing is \$140,386.08, with receivables and cash on the date of filing total approximately \$111,603.47 leaving approximately \$90,285.26 available security (\$61,502.65 of which is cash and receivables) for CAN Capital on its approximately \$109,201.61 claim, but leaving no available equity for junior secured creditors. Therefore, pursuant to 11 U.S.C. 506, all such secured creditors are in fact unsecured. With respect to all creditors listed herein other than Washington Federal and CAN Capital, Debtor is informed and believes that they do not have an interest in cash collateral, but rather, only in specific equipment, trucks, and/or trailers, and any of the proceeds from the sale of that particular equipment, trucks and/or trailers. That equipment, trucks and/or trailers are not being sold pursuant to this motion, and as such, all creditors other than Washington Federal and CAN Capital are only listed here out of an abundance of caution.

9. DESCRIPTION OF RECEIVABLES. The Debtor's receivables consist of money owed for performing the service of hauling crude oil. An aging statement can be provided to the affected creditors and any party requesting such a statement.

10. THE ESTIMATED FAIR MARKET VALUE OF THE COLLATERAL AND BASIS FOR THE ESTIMATE. The cash collateral in the Debtor's account totaling \$2,823.32 can be demonstrated by the Debtor's prepetition bank statements. The receivables totaling \$109,201.61 are valued at their face amount and are evidenced on the Debtor's aging statement. The value of all other assets is set forth in the schedules filed with the Court.

11. SEGREGATED ACCOUNTS. Debtor's cash and cash collateral are

currently in the Debtor's pre-petition operating account. The Debtor is in the process of opening its Debtor-in-Possession accounts and postpetition proceeds will, upon completion of opening the Debtor- in-Possession accounts, be deposited into the DIP accounts, including separate cash collateral accounts for the Prepetition Senior Lender and the Prepetition Junior Lender, except that the Debtor is concurrently filing a motion to maintain its prepetition accounts for a period of sixty (60) days so that pending ACH deposits or electronic transfers can be made without interruption to the Debtor's business, and so that a single prepetition insurance premium payment of \$3,645.89, made to HDI First Insurance Funding, the Debtor's vehicle insurance company, but not cleared on the date of filing will be able to clear the bank.

12. DEMONSTRATION OF NEED. Debtor requires the use of cash collateral in order to pay the WSI \$7,500 to obtain necessary workers' compensation insurance so that it can operate in North Dakota, and so that it can pay employee wages, owner compensation, and normal operating expenses as noted in the budget. Without obtaining the appropriate insurance (as required by the United States Trustee) from the WSI, the Debtor would not be allowed to be in a Chapter 11, and will not be able to fund a plan. This initial payment was negotiated with the WSI and a stipulation has been signed between the Debtor and the WSI in order to afford the Debtor a chance to reorganize. That Stipulation will be filed with the Court.

13. Without the Debtor's workers, Debtor will be unable to continue its ongoing business operations and effectively reorganize, and will be unable to adequately preserve value to the estate. It is also believed that the majority of Debtor's employees and/or contractors rely on these wages to pay their weekly household expenses and a missed paycheck creates a significant hardship for the employee and his or her family. It is necessary for the Debtor to use this cash collateral in order to continue operating its business and propose and implement a successful plan of reorganization.

14. The Debtor also requires immediate use of the cash collateral to pay the \$5,000 monthly mortgage for its shop in North Dakota located at 16058 35th Q St. NW, Fairview, ND 59221 (the "Shop"). The title of the property is in the name of KCS Mobile Repair, LLC,

which is another entity owned by the principals of the Debtor, Mr. and Mrs. Sneddon, but which does not appear to be generating income. The Debtor's equitable interest in this property is listed on Schedule A.

15. ADEQUATE PROTECTION. The Debtor is willing to give adequate protection to Washington Federal and CAN Capital by granting revolving postpetition adequate protection liens, to the same extent, value and priority as existed as of the petition date, to the extent of cash collateral actually generated. The Debtor respectfully asserts that the revolving replacement lien adequately protects the interest of Washington Federal and CAN Capital. *See* Exhibit A budget. Washington Federal is currently fully secured by the account receivables, and within just a few months, CAN Capital will be fully secured by cash collateral. With regard to the other creditors noted in Paragraph 6 above, such creditors have no interest that requires adequate protection. If the Court determines the adequate protection proposed by the Debtor insufficient, then Debtor requests that a determination be made as to such additional amounts to be paid as adequate protection.

16. THE ESTIMATED VALUE, AND BASIS FOR THE ESTIMATE, OF PROPERTY OFFERED AS ADEQUATE PROTECTION. The Debtor expects to generate monthly receivables in the approximate sum of \$90,000 to \$110,000 per month based on its projected contracts and workflow, as evidenced by the attached budget. This estimate is based on the Debtor's history and the entities that are expected to hire the Debtor going forward.

17. PRIORITY AND VALIDITY OF SECURITY INTERESTS. The exact priority of each alleged security interest is undetermined.

18. EXPENSES NEEDED ON INTERIM BASIS. Debtor requests that this Court conduct a preliminary hearing on an emergency basis, and a final hearing in January 2017. The failure to conduct such a preliminary hearing would preclude Debtor from using cash collateral to obtain necessary insurance from the WSI, pay the mortgage on its shop in North Dakota, pay its employees, and normal operating expenses. Debtor needs, on a preliminary basis pending final hearing, the amounts noted in the Interim Budget (Exhibit "B") that is incorporated

by reference. Each of the expenses described in this section are a part of the expenses outlined hereinbefore, and are not in addition to those other expenses.

19. The Debtor does not propose herein any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court (under subsection (a) of the Guidelines).

NOTICE OF INTENT TO PRESENT EVIDENCE AND TESTIMONY

YOU ARE FURTHER HEREBY GIVEN NOTICE, pursuant to Rule 9014.1 of the Local Bankruptcy Rules, that to the extent that there are any objections filed to this Motion, the Debtor intends to present testimony and evidence at the preliminary and final hearings on this Motion.

DATED: October 12, 2016

Roark Law Offices

/s/Holly Roark

HOLLY ROARK,
Proposed Counsel for Debtor/Debtor-in-Possession

EXHIBIT A

**12 Month Cash Collateral Budget
Tugg Trucking Inc.
16-40960-JPD**

Starting
10/12/16

	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17
Beginning Cash Balance	2,823.32	34,875.32	65,835.32	117,074.32	169,688.32	224,039.32	282,140.32	340,029.32
CASH RECEIPTS								
Trucking Income - Gross Revenue	50,000	90,000	100,000	105,000	105,000	110,000	110,000	110,000
Collection of Receivables	12,000	12,000	25,000	25,000	25,000	25,000	25,000	25,000
Postpetition borrowing	13,000	25,000	30,000	30,000	30,000	40,000	40,000	40,000
TOTAL CASH RECEIPTS	75,000	127,000	155,000	160,000	160,000	175,000	175,000	175,000
CASH DISBURSEMENTS								
Auto/Truck Expenses	160	1,600	1,600	1,600	1,600	1,600	1,600	1,600
Fuel	13,000	25,000	30,000	30,000	30,000	40,000	40,000	40,000
Advertising	38	375	375	375	375	375	375	375
Insurance	750	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Inventory Purchases	35	0	350	350	350	350	350	350
Officer Salaries	2,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Other Salaries/Wages	12,000	22,500	25,000	26,250	26,250	27,500	27,500	27,500
Payroll Taxes	404	4,037	3,825	4,250	4,463	4,463	4,675	4,675
Rent and Lease Payments	483	4,833	4,833	4,833	4,833	4,833	4,833	4,833
Repairs and Maintenance	1,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Supplies	98	892	975	975	975	975	975	975
Utilities	75	750	750	750	750	750	750	750
Professional Fees	200	2,000	2,000	2,000	2,000	2,000	2,000	2,000
UST Quarterly Fees				1,950				1,950
Bank Service Charges	18	180	180	180	180	180	180	180
Labor cost (uniforms, training)	43	433	433	433	433	433	433	433
Business Licenses/permits	144	1,440	1,440	1,440	1,440	1,440	1,440	1,440
Shop mortgage/rent	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Contingency	7,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
TOTAL CASH DISBURSEMENTS	42,948	96,040	103,761	107,386	105,649	116,899	117,111	119,061
NET CASH FLOW	32,052	30,960	51,239	52,614	54,351	58,101	57,889	55,939
Ending Cash Balance	34,875.32	65,835.32	117,074.32	169,688.32	224,039.32	282,140.32	340,029.32	395,968.32

EXHIBIT "A"

	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	12-Month Total
Beginning Cash Balance	395,968.32	453,857.32	511,746.32	569,635.32	622,649.32	
CASH RECEIPTS						
Trucking Income - Gross Revenue	110,000	110,000	110,000	110,000	110,000	1,330,000
Collection of Receivables	25,000	25,000	25,000	25,000	25,000	299,000
Postpetition borrowing	40,000	40,000	40,000	40,000	40,000	448,000
TOTAL CASH RECEIPTS	175,000	175,000	175,000	175,000	175,000	2,077,000
CASH DISBURSEMENTS						
Auto/Truck Expenses	1,600	1,600	1,600	1,600	1,600	19360
Fuel	40,000	40,000	40,000	40,000	40,000	448000
Advertising	375	375	375	375	375	4538
Insurance	7,500	7,500	7,500	7,500	7,500	90750
Inventory Purchases	350	350	350	350	350	3885
Officer Salaries	8,000	8,000	8,000	8,000	8,000	98000
Other Salaries/Wages	27,500	27,500	27,500	27,500	27,500	332000
Payroll Taxes	4,675	4,675	4,675	4,675	4,675	54167
Rent and Lease Payments	4,833	4,833	4,833	4,833	4,833	58479
Repairs and Maintenance	10,000	10,000	10,000	10,000	10,000	121000
Supplies	975	975	975	975	975	11715
Utilities	750	750	750	750	750	9075
Professional Fees	2,000	2,000	2,000	2,000	2,000	24200
UST Quarterly Fees				4,875		8775
Bank Service Charges	180	180	180	180	180	2178
Labor cost (uniforms, training)	433	433	433	433	433	5239
Business Licenses/permits	1,440	1,440	1,440	1,440	1,440	17424
Shop mortgage/rent	5,000	5,000	5,000	5,000	5,000	65000
Contingency	1,500	1,500	1,500	1,500	1,500	25500
TOTAL CASH DISBURSEMENTS	117,111	117,111	117,111	121,986	117,111	1,369,285
NET CASH FLOW	57,889	57,889	57,889	53,014	57,889	
Ending Cash Balance	453,857.32	511,746.32	569,635.32	622,649.32	680,538.32	

EXHIBIT "A"

EXHIBIT B

Interim Collateral Budget Tugg Trucking Inc. 10/12/16-12/31/16 16-40960-JDP
--

Starting
10/12/16

Beginning Cash Balance

Oct-16	Nov-16	Dec-16	Jan-17
2,823.32	34,875.32	65,835.32	117,074.32

CASH RECEIPTS

Trucking Income - Gross Revenue	50,000	90,000	100,000	105,000
Collection of Receivables	12,000	12,000	25,000	25,000
Postpetition borrowing	13,000	25,000	30,000	30,000

TOTAL CASH RECEIPTS

75,000	127,000	155,000	160,000
--------	---------	---------	---------

CASH DISBURSEMENTS

Auto/Truck Expenses	160	1,600	1,600	1,600
Fuel	13,000	25,000	30,000	30,000
Advertising	38	375	375	375
Insurance	750	7,500	7,500	7,500
Inventory Purchases	35	0	350	350
Officer Salaries	2,000	8,000	8,000	8,000
Other Salaries/Wages	12,000	22,500	25,000	26,250
Payroll Taxes	404	4,037	3,825	4,250
Rent and Lease Payments	483	4,833	4,833	4,833
Repairs and Maintenance	1,000	10,000	10,000	10,000
Supplies	98	892	975	975
Utilities	75	750	750	750
Professional Fees	200	2,000	2,000	2,000
UST Quarterly Fees				1,950
Bank Service Charges	18	180	180	180
Labor cost (uniforms, training)	43	433	433	433
Business Licenses/permits	144	1,440	1,440	1,440
Shop mortgage/rent	5,000	5,000	5,000	5,000
Contingency	7,500	1,500	1,500	1,500

TOTAL CASH DISBURSEMENTS

42,948	96,040	103,761	107,386
--------	--------	---------	---------

NET CASH FLOW

32,052	30,960	51,239	52,614
--------	--------	--------	--------

Ending Cash Balance

34,875.32	65,835.32	117,074.32	169,688.32
-----------	-----------	------------	------------

EXHIBIT "B"