

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

IN RE:	§	
	§	
<b>H &amp; M CONCRETE SERVICES, LLC</b>	§	Case No. 17-60532
xx-xxx1219	§	
P. O. Box 183, Fruitvale, TX 75127	§	
	§	
Debtor	§	Chapter 11

**ORDER GRANTING INTERIM USE OF CASH COLLATERAL**

On July 26, 2017, the Court conducted an emergency hearing regarding the Emergency (sic) Motion to Use Cash Collateral filed by H & M Concrete Services, LLC, the Debtor and Debtor-in-Possession (the “Debtor”) in the above-referenced case, on July 21, 2017. The Motion pertains to the apparent cash collateral of Austin Bank, Texas, N.A. (“Lender”) and seeks court authorization for the Debtor-in-Possession to use the Austin Bank’s “cash collateral,” as that term is defined in §363(a) of the Bankruptcy Code for the payment of the ongoing operating expenses of its business. Eric Liepins appeared at the hearing on behalf of the Debtor-in-Possession. Glen Patrick appeared on behalf of Austin Bank.

Under Fed. R. Bankr. P. 4001(c)(2), a final hearing on a motion for authorization to use cash collateral can be commenced no earlier than 14 days after service of the motion. The Court may conduct a preliminary hearing before such 14-day period expires but, however, the court may authorize the use of cash collateral only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Thus, the scope of the preliminary hearing was limited to whether interim authority to

utilize the cash collateral of the Lender should be granted to the Debtor-in-Possession in order to avoid immediate and irreparable harm to the estate.

The Court finds that appropriate notice of the preliminary hearing was given according to the Federal and Local Rules of Bankruptcy Procedure. Based upon the Court's consideration of the pleadings, the evidence admitted at the preliminary hearing, and the argument of counsel, and for the reasons more specifically expressed on the record in open court pursuant to Fed. R. Civ. P. 52, as incorporated into contested matters in bankruptcy cases by Fed. R. Bankr. P. 7052 and 9014, the Court finds that an order authorizing the Debtor-in-Possession to use the cash collateral of the Lender on an interim basis, subject to certain conditions and limitations, is necessary to avoid immediate and irreparable harm to this estate. Accordingly, the Court finds that just cause exists for the entry of the following order.

**IT IS THEREFORE ORDERED** that the Debtor is authorized to use the Cash Collateral, strictly in accordance with the Budget attached hereto as Exhibit A, and subject to the terms and conditions of this Order, for an interim period from July 21, 2017, to 11:59 p. m. on August 17, 2017 (the "Interim Period"), or as otherwise extended by the order of this Court or by the agreement of the parties. The authorization to use Cash Collateral shall automatically terminate upon the earlier of (i) relief from stay is obtained with respect to the Collateral, (ii) the case is dismissed, (iii) the case is converted to one under Chapter 7, (iv) a Chapter 11 trustee is appointed, or (v) a payment is made which is not authorized by this Order or otherwise consented to in writing by Austin

Bank.

**IT IS FURTHER ORDERED** that, in order to provide adequate protection for the interests of Austin Bank for the interim use of its cash collateral, pursuant to 11 U.S.C. §§ 361, 363, 507(b) and 552(b), and without the necessity of the execution by the Debtor of additional security agreements, pledge agreements, financial statements or other documents, Austin Bank is granted, as of July 21, 2017 (the “Petition Date”), replacement liens, solely to the extent of the Lender’s actual interest in Cash Collateral and any diminution in its secured position as a result of the Debtor’s use of cash collateral in the Interim Period, upon: (i) all assets in which a validly perfected lien existed as of the Petition Date; (ii) all property acquired by the Debtor in the Interim Period that is of the exact nature, kind, or character as the Lender’s pre-petition collateral; and (iii) all cash and receivables attributable to the Lender’s pre-petition collateral.

**IT IS FURTHER ORDERED** that, as an additional component of adequate protection, the Debtor shall provide the Lender with a weekly report reconciling all post-petition revenues and expenditures with the budget attached hereto as Exhibit A. Each report shall identify the source and amount of revenue received. With respect to each expenditure, the report shall identify the person or entity paid, the amount of the expenditure, the purpose of the expenditure, and the line item on the budget that authorizes the expenditure. Each report shall cover the period from Friday to the end of business on the following Friday and shall be delivered to counsel for Austin Bank by 5:00 p.m. on the following Monday. The first report shall cover the period from Friday

July 21, 2017, through the end of business on Friday, July 28, 2017, and shall be delivered to the counsel for Austin Bank by 5:00 p.m. on Monday, July 31, 2017. The Debtor is further directed to provide Austin Bank with reasonable access to Debtor's books and records to the extent deemed necessary by Austin Bank to ensure compliance with this Order.

**IT IS FURTHER ORDERED** that, as additional component of adequate protection, the Debtor shall provide Austin Bank with a written report of outstanding accounts receivable invoiced by the Debtor, outstanding accounts payable invoiced to the Debtor, work performed but not invoiced, and any jobs or contracts awarded to the Debtor but not performed, as of the end of business on Friday, August 11, 2017.

**IT IS FURTHER ORDERED** that the Debtor shall deposit in its operating account (or DIP account as soon as access to the DIP account is available) all monies and revenues generated from the operation of its business and shall make all expenditures from that account.

**IT IS FURTHER ORDERED** that the Debtor shall maintain and provide to Austin Bank certificates of casualty insurance coverage on its collateral, to the extent provided under the pre-petition loan documents, and shall provide the Bank with prompt notification of any change in such coverage which may hereafter occur.

**IT IS FURTHER ORDERED** that this Order is without prejudice to the rights of Austin Bank including, but not limited to, its right to dispute at any time the Debtor's use of the cash collateral other than as authorized herein, seek relief from the automatic stay

or the dismissal of this case, and the entry of this Order is not to be interpreted as a final finding as to adequate protection.

**IT IS FURTHER ORDERED** that, in the absence of the filing of an agreement among the parties extending the interim authorization granted herein for an additional period of time, the Court will convene a final hearing on the Motion to consider the entry of a final order regarding cash collateral authorization on **Thursday, August 17, 2017, at 2:00 p.m.** in the Courtroom of the United States Bankruptcy Court for the Eastern District of Texas, Tyler Division, Plaza Tower, 110 N. College Ave., Ninth Floor, in Tyler, Texas.

**This is the only notice that will be provided for this hearing.**

**IT IS FURTHER ORDERED** that the Clerk shall distribute copies of this Order to all attorneys active in this case by electronic means and otherwise to all parties listed on the Master Mailing Matrix as constituted by the Court on the date of its entry through the Bankruptcy Noticing Center.

Signed on 07/28/2017

A handwritten signature in cursive script, appearing to read "Bill Parker", written in black ink.

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THE HONORABLE BILL PARKER  
UNITED STATES BANKRUPTCY JUDGE

## Budget- Exhibit A

### Expenses

Payroll w/taxes	24,000
insurance	2,000
fuel	300
phone	600
repairs	500
COG	30,000
Income	60,000