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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

ERATH IRON & METAL, INC.

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CASE NO. 17-40693-MXM-11

AMENDED DEBTOR'S EMERGENCY MOTION FOR EMERGENCY INTERIM AND FINAL ORDER
AUTHORIZING USE OF CASH COLLATERAL

TO THE HONORABLE MARK X MULLIN, UNITED STATES BANKRUPTCY JUDGE:

STATEMENT OF RELIEF REQUESTED

DEBTOR SEEKS PERMISSION TO USE THE CASH COLLATERAL OF COLEMAN COUNTY STATE BANK, ON AN EMERGENCY, INTERIM BASIS TO PREVENT IMMEDIATE AND IRREPARABLE INJURY TO THE METAL PURCHASE, SHREDDING AND SELLING BUSINESS MAINTAINED BY THE DEBTOR AND LOCATED IN ERATH COUNTY, TEXAS.

DEBTOR'S PROPOSED BUDGET (SEE EXHIBIT "1") PROVIDES FOR THE NECESSARY EXPENSES TO MAINTAIN AND CARE FOR THE DAY TO DAY OPERATION OF THE BUSINESS.

THE LIENS ON CASH COLLATERAL ARE HELD BY COLEMAN COUNTY STATE BANK. NO ADDITIONAL OR REPLACEMENT LIENS ARE PROVIDED FOR UNLESS FURTHER ORDERED BY THE COURT.

NOTICE IS HEREBY GIVEN THAT:

DEBTOR WILL SEEK AN EMERGENCY EXPEDITED HEARING ON THIS MOTION.

IN THE EVENT YOU OBJECT TO THE INTERIM RELIEF SOUGHT IN THIS ORDER YOU SHOULD IMMEDIATELY FILE A WRITTEN OBJECTION TO THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 501 W. 10TH STREET, FT. WORTH, TX 76107 BEFORE THE CLOSE OF BUSINESS AT LEAST FIVE DAYS PRIOR TO THE FINAL HEARING WHICH WILL BE SET BY THE COURT AND NOTICED TO ALL PARTIES.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN ABOVE. IF A RESPONSE IS FILED, A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN WITHOUT FURTHER NOTICE.

Erath Iron and Metal, Inc. ("Debtor"), Debtor and Debtor-In-Possession herein, moves the Court for the entry of Interim and Final Orders authorizing the use of "cash collateral" of Coleman County State Bank. Emergency relief on an interim basis with limited notice is warranted because the Debtor has insufficient unencumbered cash with which to operate, even on a short-term basis, absent an Emergency Interim Order authorizing the use of cash collateral because without the relief requested Debtor will be unable to pay its employees and other expense the payment of which are critical to the continued operation of Debtor's business. In support of the relief requested herein, the Debtor respectfully represents the following:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §1334(b) and the standing order of reference of the District Court. This matter is a core proceeding under 28 USC §157(b)(1), (b)(2)(M).

2. Venue in this Court is proper under 28 U.S.C. §§1408, 1409 and 1412.

II. BACKGROUND

3. On February 22, 2017, (the "Petition Date"), Debtors filed their Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code.

4. Debtor is a Texas corporation doing business as Erath Iron and Metal in Erath Bosque, Eastland, Johnson, Stephens and Howard Counties, Texas. Debtor buys and sells metal recyclable material, and utilize thirty (30) employees and outside services. Debtor is presently purchasing and selling approx. 125 tons of material per day. Debtor's business must be maintained in order to keep vendors and knowledgeable employees that make reorganization feasible. Failure to maintain Erath Iron and Metal as an ongoing business would cause Debtor to default on its debts and would jeopardize its' ability to successfully reorganize. Maintaining the business's skilled employees, whose high attention to detail and constant monitoring of the incoming product and shredding machinery and with knowledge and relationships with purchasers is critical to reorganizing the business. The failure to have the facilities open and able to take in raw material would have a negative impact on having adequate product to maintain the business. Simply put, the failure to maintain the suppliers, vendors and experienced employee base would make it next to impossible to reorganize the business.

5. In response to the Debtor's deteriorating financial position, cutting off Debtor's right to buy and sale recycling products and taking any proceeds and a threatened foreclosure by Debtor's principal creditor, the Debtor filed its bankruptcy petition to protect the value of its business enterprise from further erosion and to facilitate the implementation of various strategies to maximize the value of the Debtor's estate.

6. As of the Petition Date, the Debtor's primary indebtedness consisted of the following:

(a) Approximately \$1,135,000 in debt owing to Coleman County State Bank, which is secured by a security interest in real property located at 6970 S US 377, Stephenville, Texas and 235 W. Elm in Dublin Texas, along with Debtor's inventory and receivables. An additional \$6,000,000.00 line of credit with a lien on inventory and other cash collateral is also owed to Coleman County State Bank.

(b) Approximately \$519,000 in Debt to World Business Lenders for property located at 569 CR 378 in Stephenville, Texas.

(c) The Debtor has approximately \$2,365,000 in other secured debt to the following creditors:

- (1) ECN Capital;
- (2) Ford Credit;
- (3) Izuzu Finance of America;
- (4) Santander;
- (5) TCF Equipment Finance;
- (6) Texas Bank;
- (7) Plains Capital Bank;
- (8) 1st Source Group;
- (9) Caterpillar Financial Services, Corp.
- (10) Toyota Financial Services Commercial Services

(c) The Debtor has approximately \$800,000 of unsecured trade debt.

(d) The Debtor has unpaid taxes of approximately \$13,500.00 and otherwise owes except current payroll and ad valorem taxes.

7. Debtor has previously executed documents which appear to give a security interest to Coleman County State Bank in certain of the Debtors' assets, including Debtors' real property, inventory and cash proceeds from inventory, and other property that would constitute "cash collateral" within the meaning of 11 U.S.C. § 363(a).

8. Because the Debtor's obligations to Coleman County State Bank appear to be secured by all, or substantially all, of the Debtor's assets, including the real and personal property, and because the pledge documents, Notes, and Security Agreements, (all of which the Debtors and their counsel have not yet fully reviewed), the Debtor's right to use the sale proceeds from the sale of all recycled material, receivables and proceeds of recyclables on the

Petition Date and all post-petition receipts are cash collateral (the "Cash Collateral"), that the Debtor may only use with the permission of Coleman County State Bank or of the Court.

III. EMERGENCY AND OTHER RELIEF TO USE CASH COLLATERAL
REQUESTED AND BASIS THEREFOR

9. Through this Motion, the Debtor seeks authority to use the Cash Collateral on an emergency basis, and an interim and final basis pursuant to § 363 of the Bankruptcy Code and Rule 4001(b),(d) of the Federal Rules of Bankruptcy Procedure.

10. Approval to use cash collateral on an emergency basis is necessary because immediate and irreparable harm will result to the business. Providing such requires the payment of employees and maintaining utility and other services such as payment of vendors.

11. § 363 provides generally that a Chapter 11 Debtor may not use, sell, or lease cash collateral unless each party with an interest in the collateral consents or unless the Court, after notice and hearing, authorizes such use, sale or lease. 11 U.S.C. §363(c)(2) ; 11 U.S.C. §1107(a) (giving the Chapter 11 Debtor, as a Debtor-In-Possession, all the rights and powers of a trustee, with certain exceptions not applicable here). Given the Debtor's need to continue the uninterrupted operation and maintenance of the recycling business facility, including the purchase and sale and replacement of recycle material, payment of employees, repairs and maintenance, payment of utilities and other operating expenses, and warranted on an emergency basis, the Debtor believes this Court's approval to use the Cash Collateral without further notice is necessary and appropriate.

12. Coleman County State Bank has not consented to the Debtor's use of the Cash Collateral. The Debtor desires to use Cash Collateral, based upon the Budget attached hereto as Exhibit "1", hereinafter the "Budget". Exhibit "1" reflects the anticipated income for February 23 to March 23, 2017.

13. Coleman County State Bank's interest will be adequately protected by continuing in place the liens and security interest in place and in effect on the Petition Date, or as may be ordered otherwise by the Court.

14. The Debtor requests emergency relief to use the Cash Collateral on an interim basis to prevent immediate and irreparable harm to the Debtor's estate in accordance with the attached Budget pursuant to Bankruptcy Rule 4001 (b)(2). Absent the emergency interim relief requested herein, the Debtor will suffer immediate and irreparable injury because it will not have any cash available to fund operations and in turn protect the value of the recycling buying and selling operations. Under the circumstances, the Debtor submits that the entry of a Cash Collateral Order on an interim and emergency basis is necessary to preserve the enterprise value of the Debtor's estate, and preserve the value of the collateral pledged to Lone Star. As Debtor's future cash collateral usage needs are identified, additional relief will be sought.

15. Pursuant to Bankruptcy Rule 4001(b),(d), the Debtor also requests entry of the Cash Collateral Order on a final basis after appropriate (14 day) notice and a hearing. Without entry of the Cash Collateral Order as a final Order, the Debtor will be unable to fund operations during the pendency of this Chapter 11 case, and Debtor's ability to reorganize will be substantially impaired.

16. The Debtor submits that entry of the Final Cash Collateral Order, after notice and hearing, is necessary to preserve the Debtor's estate and is, therefore, in the best interests of creditors.

17. No previous Motion for the relief requested has been brought in this or any other Court.

IV. NOTICE

18. Bankruptcy Rules 4001 and 9014 generally require that any proceeding to use cash collateral be made only upon Motion and on notice to any other entity that has an interest in the Cash Collateral, the Committee appointed under the Code, and such other entities as the Court may direct.

16. Notice of this Motion has been given to the Office of the United States Trustee for the Northern District of Texas, Coleman County State Bank, through its counsel, Thomas Choate, each of the Debtor's secured creditors, the Debtor's twenty (20) largest unsecured creditors, and the additional parties identified on the attached Mailing Matrix.

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court enter an Interim Emergency Order on an expedited and emergency basis to use the Cash Collateral pursuant to Exhibit "1" on the periods reflected thereon, and after notice and hearing, a Final Order granting the relief requested herein and providing for such other and further relief to which the Debtor may be justly entitled.

Debtor prays for general relief.

Respectfully submitted,

KING LAW OFFICE P.C.

by: /s/ Russell W. King
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PROPOSED ATTORNEYS FOR DEBTOR

CERTIFICATE OF CONFERENCE

I certify that I have conferred with Elizabeth Zeigler with the Office of the United States Trustee and she is reviewing document information to see if she is unopposed. I have also conferred with Tom Choate, counsel for Coleman County State Bank, and at this time we have been unable to reach Tom Choate.

/s/ Russell W. King

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing via first class mail, proper postage affixed or via ECF, upon the following:

Office of the U. S. Trustee
1100 Commerce Street, Room 976 Dallas, TX 75242

Tom Choate, Attorney, 104 Pine Street, Abilene Texas 79601
(Attorney for Coleman County State Bank)

and upon those filing a Notice of Appearance:

Dated:

February 24, 2017.

/s/ Russell W. King
RUSELL W. KING