

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

CHAPTER 11

**NEW ENGLAND MECHANICAL
COORDINATION & CONSULTING, LLC**

Case No. 17-10133-BAH

Debtor

**DEBTOR'S SECOND MOTION FOR ORDER
AUTHORIZING CONTINUED USE OF CASH COLLATERAL
AND PROVISION OF ADEQUATE PROTECTION**

The debtor in possession, **New England Mechanical Coordination & Consulting, LLC** (the "Debtor") respectfully moves this Court as follows:

INTRODUCTION AND REQUESTED RELIEF

- 1.** Pursuant to Code Sections 105, 361 and 363, the Debtor asks this Court for an order authorizing it to use up to \$75,000 in cash collateral, as such term is defined in Code Section 361 (the "Maximum Use" or "Maximum Use Amount") to pay the ordinary course of business costs and expenses provided for the in Budget attached as Exhibit A (the "Budget") during the period between **June 1, 2017** and **August 31, 2017**, inclusive (the "Use Period") subject to providing People's United Bank ("PUB") and/or the Internal Revenue Service and United States of America (collectively, the "IRS"), as appropriate, with the adequate protection summarized in the following paragraph and described with particularity in the proposed Order.
- 2.** The following exhibit(s) are attached hereto and incorporated herein by reference:
 - a.** Exhibit A: Budget.
- 3.** Accompanying this Motion is a proposed Order granting the Debtor the relief requested (the "Order"). The proposed Order:

a. Limits the amount of Cash Collateral which Debtor may spend during the Use Period to \$327,605.00 (the “Maximum Use”);

b. Requires the Debtor to pay PUB the sum of \$750.00 on the 15th day of each month during the Use Period.

c. Requires the Debtor to pay the IRS the sum of \$1,800.00 on the 15th day of each month during the Use Period. If, and to the extent that cash collateral use continues for more than 6 months, the IRS adequate protection payment shall be increased to \$3,685.66 in October, 2017.

d. Requires the Debtor to pay 1/12th of the annual premiums becoming due on its general or public liability and property damage insurance and keep such insurance policies in full force and effect.

e. Grants to each Record Lienholder a replacement lien on the Debtor’s Premises on which they hold a lien on the date hereof until avoided by an order entered by this Court.

f. Reserves to each Record Lienholder the right to contest in an appropriate proceeding the value of the Cash Collateral and any other collateral held or claimed by the Record Lienholder.

g. Reserves to Debtor the right to contest the validity, perfection, enforceability or value of any lien held or claimed by a Record Lienholder for any reason.

4. The Debtor incorporates the allegations made in the First Motion for Order Authorizing Continued Use of Cash Collateral and Provision of Adequate Protection [Doc. 43] (the “Preceding Cash Collateral Motion”). No creditor or any other party in interest challenged,

disputed or otherwise contested the truth of those allegations. Nothing has changed or occurred that makes those allegations inaccurate on the date of this Motion.

JURISDICTION

5. This Motion is predicated on Code Sections 105, 361 and 363 and Bankruptcy Rule 4001.

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BASIS FOR REQUESTED RELIEF

8. Code Section 363(c)(2) prohibits a debtor from using Cash Collateral without the consent of each “entity that has an interest in such Cash Collateral” unless this “court ... authorizes such use.”

9. The Debtor is a debtor in possession and trustee. It continues to own and operate the Business pursuant to Bankruptcy Code Sections 1107 and 1108.

THE BUDGET

10. Attached to this Motion as Exhibit A is the Budget for the management, operation and maintenance of the Business during the Use Period. Michael Zyla, the Owner and Manager of the Debtor, prepared the Budget based on his personal knowledge of the Debtor, its business and the Existing Contracts and Customers.

11. As required by LBR 4001-2(d), the Budget projects the amount of receipts and disbursements to be received and made by the Debtor during the Use Period.

12. The Budget shows, among other things, that:

a. The Debtor proposes to use \$327,605 of its \$374,346 in revenue to pay

costs and expenses incurred in the ordinary course of business.

b. The Debtor will be able to pay the costs and expenses incurred in the ordinary course of business during the Use Period if it has the ability to spend the Maximum Amount.

c. The Debtor should have positive cash flow of \$60,241.00 during the Use Period.

d. By the end of the period, the Debtor should have nearly enough money to repay the \$75,000 in cash collateral used by the Debtor pursuant to the earlier Cash Collateral Order, less the payment already made to PUB and IRS.

13. The inability to use cash collateral up to the Maximum Amount jeopardizes the reorganization and the Debtor's creditors and other parties in interest.

14. No significant diminution in the value of the cash collateral should occur over the Use Period.

15. The Debtor's business and property have far more value in a reorganization than in a liquidation. The major assets are the Existing Contracts. If not fulfilled, the Existing Contracts will become liabilities that may actually diminish the value of the pre-petition accounts receivable held by PUB and/or IRS.

16. Since the Debtor's post-petition general intangibles in the form of contract rights and prepayment accounts and accounts receivable will increase over the Use Period in Mr. Zyla's business judgment, the Debtor reasonably expects to be able to reorganize itself for the benefit of its creditors and equity holders.

17. As shown by the Budget, the ability to use cash collateral on a short-term basis is essential to an effective reorganization of the Debtor. A reorganization is in prospect.

18. Based on the Latva Realty Subordination Agreement, the Debtor has the ability to provide PUB and/or IRS, as appropriate, with adequate protection in the form of the adequate protection payments and the replacement liens.

WHEREFORE, the Debtor respectfully requests this Court to grant the Debtor the relief requested herein by entering the proposed Order and grant the Debtor such further relief as may prove to be fair and equitable or lawful.

Respectfully submitted,

DATED: May 17, 2017

/s/ William S. Gannon
William S. Gannon, BNH 01222

Counsel to:

**NEW ENGLAND MECHANICAL
COORDINATION & CONSULTING, LLC**

WILLIAM S. GANNON, PLLC
889 Elm Street, 4th Floor
Manchester, NH 03101
PH: (603) 621-0833

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing pleading on each person and entity named below by causing it to be filed electronically via the CM/ECF filing system or mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

All persons/entities named on the CM/ECF Electronic Service List – electronically via CM/ECF

IRS
Special Procedures
80 Daniel St., PO Box 9502
Portsmouth, NH 03802

Internal Revenue Service
Centralized Insolvency Operations
P.O. Box 7346
Philadelphia, PA 19101-7346

State of New Hampshire
Dept. of Employment Security
Attn: Arnold Rocklin-Weare
45 So. Fruit Street
Concord, NH 03301

CASH COLLATERAL RECORD LIENHOLDERS

People’s United Bank – to attorney via CM/ECF

Internal Revenue Service to attorney via CM/ECF

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The United States Attorney’s Office
District of New Hampshire
53 Pleasant Street, 4th Floor
Concord, NH 03301

Michael McCormack, Assistant U.S. Attorney, District of NH – via email
Michael.McCormack2@usdoj.gov

Corporation Service Company, as Representative – via email
SPRFiling@cscinfo.com

NB PEP Holdings Limited – to Corporation Service Company, as Representative – via email
SPRFiling@cscinfo.com

C T Corporation System, as Representative – via email
CLS-CTLS_Glendale_Customer_Service@wolterskluwer.com

ACME Company – to Corporation Service Company, as Representative – via email
SPRFiling@cscinfo.com

20 LARGEST UNSECURED CREDITORS

Air Distribution Corp – via email
hdupre@air-distribution.com

American Express – via email
proofofclaim@becket-lee.com

Anthem Blue Cross / Blue Shield
P.O. Box 1168
Newark, NJ 07101-1168

Berkshire Hathaway Guard Insurance
P.O. Box A-H
Wilkes Barre, PA 18703

Capital One
Sparks Business Acct
P.O. Box 30285
Salt Lake City, UT 84130-0287

Fab Tech – via email
svernick@fabtechinc.com

Fastenal Fastenal – via email
Reporting@fastenal.com

Grainger Industrial Supply – via email
Margaret.blaus@grainger.com

Hood T.A.B. LLC – via email
mikehood@comcast.net

Liberty Mutual Insurance
P.O. Box 2051
Keene, NH 03431-7051

Local Union 17 NH – via email
rkeogh@smw17trustfunds.org

Local Union 83 NY – via email
mlsmlu83@nycap.rr.com

Northeast Air Solutions, Inc. – via email
Bill@nas-hvac.com

Northeastern Sheet Metal – via email
pboon@nesmcorp.com

SAM Mechanical – – to attorney via CM/ECF

Sheet Metal Workers Benefit Funds – via email
CGreene@smwnbf.org

State of NY – via email
Box398@nysif.com

Sunbelt Rentals – via email
belinda.washington@sunbeltrentals.com

Total Air – via email
moneymort@comcast.net

United Rentals (North America), Inc. – via email
cbennett@ur.com

DATED: March 17, 2017

/s/ Beth E. Venuti
Beth E. Venuti, Paralegal