



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 30, 2017

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	§	<b>CASE NO. 17-31585-bjh-11</b>
	§	
<b>ALLIED ELECTRICAL GROUP OF TEXAS, INC.,</b>	§	<b>CHAPTER 11</b>
	§	
<i>Debtor and</i>	§	<b>HEARING HELD:</b>
<i>Debtor-in-Possession.</i>	§	<b>05/30/17 @ 10:00 A.M.</b>

**THIRD AGREED INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL  
PURSUANT TO 11 U.S.C. §§105, 361, 362 AND 363(c); AND GRANTING ADEQUATE  
PROTECTION**

ON THIS DAY the Court heard the Debtor’s Emergency Motion for an Interim and Final Order (a) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. §§105, 361, 362 and 363(c); and (b) Granting Adequate Protection; Preliminary and Final Use of Cash Collateral (the “Motion”) [Docket No. 7] filed by Allied Electrical Group of Texas, Inc. (“Debtor”), and upon the consent of Internal Revenue Service (“IRS”), as statutory lien holder to the Debtor’s use of Cash Collateral as that term is defined herein, and it appearing to the Court that the Debtor and IRS have in good faith negotiated, stipulated and agreed to terms for the Debtor’s use of Cash Collateral as set forth herein, and the Court, being fully advised in the premises, and based upon

the Motion, the evidence presented, the representations of counsel for the Debtor and IRS, hereby approves and adopts said stipulations and agreements as findings of fact and conclusions of law, and FINDS as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this bankruptcy case, the parties, and property affected pursuant to 28 U.S.C. §§157(b) and 1334. This matter is a core proceeding under 28 U.S.C. §157(b)(2).

2. Under the circumstances, the Debtor has provided adequate notice of the Motion and the hearing to all creditors and other parties in interest entitled to such notice pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9014, and as required by Sections 105, 361, 362, and 363 of the Bankruptcy Code.

### **II. PROCEDURAL BACKGROUND AND FACTS**

3. On April 20, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is presently operating and managing its property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. The Debtor operates a business that provides electrical construction and service throughout the Dallas/Fort Worth Metroplex. The Debtor is currently involved in four (4) construction projects in various phases of completion and provides electrical services as requested to various customers.

5. Prior to the Petition Date the Internal Revenue Service ("IRS") filed Form 668 Notices of Federal Tax Liens ("IRS Liens") asserting liens on all the Debtor's property and rights to property. Pursuant to the IRS Liens, the IRS asserts the Debtor is indebted to the IRS for

taxes, penalties and interest for Section 941 taxes in the aggregate amount of approximately \$262,000. Subsequent to filing the IRS Liens and shortly before the Petition Date, the IRS placed a levy on the cash in the Debtor's primary bank account.

### III. THE CASH COLLATERAL

6. As a result of the IRS Liens on all property and rights to property belonging to the Debtor, the IRS asserts that all rents, income, revenues, profits, property receipts, and insurance proceeds generated by or related to the Debtor's property and business operations and all cash, negotiable instruments, deposit accounts or other cash equivalents related thereto, whether existing on or received by the Debtor subsequent to the Petition Date, are and shall constitute the IRS's cash collateral under Section 363(a) of the Bankruptcy Code (the "Cash Collateral").

7. The Debtor asserts that the use of Cash Collateral is necessary for the Debtor to continue to operate its business. Without the use of Cash Collateral, the Debtor asserts that it will not be able to pay postpetition operating expenses and obtain goods and services needed to carry on its business in a manner that will avoid irreparable harm to the Debtor's estate. Debtor further asserts that its ability to use Cash Collateral is necessary to preserve and maintain the going concern value of the Debtor's estate.

8. The Debtor seeks, on an interim basis, authorization to use the Cash Collateral to pay the actual, ordinary and necessary operating expenses (the "Expenses") as set forth on the budget attached hereto as **Exhibit A** ("Budget") through and until July 7, 2017, or until the Court enters a final order authorizing the use of Cash Collateral. The Budget has been reviewed by the Debtor and their management and sets forth, among other things, the projected cash receipts and projected cash disbursements of the Debtor for the periods covered thereby.

9. The Debtor has no cash other than the cash subject to the IRS Liens. The Debtor's use of the Cash Collateral as set forth herein is thus necessary to avoid immediate and irreparable harm to the Debtor and its creditors. Good, adequate, and sufficient cause has thus been shown to justify the granting of the relief requested herein.

10. IRS does not oppose the Debtor's use of Cash Collateral for the period of May 30, 2017 to July 7, 2017 as reflected in and in accordance with the terms and conditions as set forth in this Third Agreed Interim Order and the Budget attached as **Exhibit A**.

#### IV. ORDER

Based upon the above findings, the Court, having reviewed the Motion, considering the representations of counsel, the agreement of the parties, and otherwise being fully advised, hereby ORDERS as follows:

11. **Hearing and Notice**. The hearing on the Motion was held pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure in order to prevent immediate and irreparable harm to the estate.

12. **Good Cause**. Good cause has been shown for the entry of this Third Agreed Interim Order. The entry of this Third Agreed Interim Order is in the best interests of the Debtor, their creditors and the bankruptcy estate. The terms and conditions of the Debtor's proposed use of IRS's Cash Collateral, and the security interests, liens, rights and priorities granted to IRS hereunder are fair and appropriate under the circumstances.

13. **Cash Collateral Account**. The Debtor shall maintain a debtor-in-possession bank account(s); which shall contain all operating revenues and any other source of cash constituting Cash Collateral, which is generated by and is attributable to the Business. The Debtor shall immediately deposit into the Cash Collateral Account all Cash Collateral, including

all Cash Collateral presently in the possession of or under the control of the Debtor, and all Cash collateral generated or received subsequent to the Petition Date. All funds on deposit in the Cash Collateral Account shall constitute the IRS' Cash Collateral under Section 363 of the Bankruptcy Code and are subject to the terms of this Third Agreed Interim Order.

14. **Terms of Cash Collateral Use.**

(a) Subject to the provisions and conditions herein, the Debtor is hereby authorized to use Cash Collateral to pay the Expenses as set forth on the Budget through July 7, 2017, in accordance with the Budget attached hereto as **Exhibit A**. Absent IRS's written consent to the further use of Cash Collateral, any use thereof must be based upon further order of the Court.

(b) The Debtor's use of Cash Collateral to pay Expenses shall be limited to the lesser of the amount in the Budget for each line item and the actual, ordinary and necessary expenditure for such line item. The Debtor shall be permitted a 10% variance over line items in the Budget. The Debtor shall not, however, be permitted to carry over any excess of budgeted costs in one line item on the Budget to any shortage of budgeted costs on any other line item, or from one month on the Budget to any subsequent month, without IRS's prior written consent or further Order of the Court.

(c) Any consent granted by IRS to the use of Cash Collateral shall not be construed as: (i) consent to an extension of exclusivity pursuant to Section 1121 of the Bankruptcy Code; (ii) consent to a surcharge against the Cash Collateral, or IRS pursuant to Bankruptcy Code Section 506(c) or otherwise; (iii) any agreement that IRS's interest in its Collateral is adequately protected; (iv) a waiver of the right to seek relief from the automatic stay; or (v) any waiver as to any such other and further relief as IRS may deem appropriate.

(d) Except in strict accordance with the Budget and the provisions of this Third Agreed Interim Order, the Debtor shall not be permitted to spend any Cash Collateral or withdraw any funds on deposit in the Cash Collateral Account for any reasons whatsoever without the written consent of IRS or further order of this Court. The Debtor shall also not use any Cash Collateral to pay any expenses not described in the Budget, to pay any prepetition debts of the Debtor, or to pay any professional fees or expenses of the Debtor not included in the Budget without the consent of the IRS or Court Approval.

(e) The Debtor shall also be authorized to use the Cash Collateral to make requisite quarterly payments to the U.S. Trustee during the pendency of the case.

(f) The Debtor shall be authorized to use the Cash Collateral to pay professionals fees and expenses, including attorneys' fees and expenses, as may be approved through the pending of this bankruptcy case.

15. **Adequate Protection Liens.** As partial adequate protection to the IRS for the Debtor's use of Cash Collateral, the interest in the Debtor's assets securing the indebtedness to the IRS, the IRS shall be and hereby is granted from, on and after the Petition Date, valid and automatically perfected ("Replacement Liens") co-extensive with the IRS' prepetition liens, in all currently owned or after acquired property and assets of the Debtor, including, but not limited to, the proceeds, products and offspring of such property and assets, but specifically excluding causes of action and recoveries under Chapter 5 of the Bankruptcy Code (the "Adequate Protection Liens").

16. Notwithstanding the foregoing, however, nothing contained in this Third Agreed Interim Order shall be construed to (a) grant IRS liens which are senior to any ad valorem

property tax liens, or (b) determine that IRS holds liens against the Debtor's assets that are senior to liens securing ad valorem property taxes.

17. **Accounting and Reporting Requirement.** During the period governed by this Third Agreed Interim Order, the Debtor shall maintain an accounting, in line item detail corresponding to the line items set forth in the Budget, of all Cash Collateral, and all funds deposited into and expended from the Cash Collateral Account, and shall provide IRS with that accounting no later than the 15 days after the end of each calendar month. In addition, the Debtor shall provide to IRS such other documents, reports and/or financial information as may be requested by IRS. Any reports required by the United States Trustee, including monthly operating reports shall be served on the IRS.

18. **Taxes.** The Debtor shall remain current on all post-petition tax payments and reporting obligations, including, but not limited to, all federal trust fund taxes. The Debtor shall provide copies of all tax returns, instruments used to remit tax payments, and all supporting documentation to counsel for the IRS and the U.S. Trustee within three (3) business days of a request for such documents from the Debtor.

19. As to the IRS:

- The Debtor must stay current on payment via EFTPS of all of its post-petition payroll taxes. To be current, the Debtor must make the payment for all payroll taxes incurred in a calendar month by the 15<sup>th</sup> day of the following month;
- The Debtor must stay current on payment via EFTPS of all of its post-petition payroll deposits. To be current, the Debtor must make the payment by the 15<sup>th</sup> day of the month following each monthly payroll;
- The Debtor must timely file all of its post-petition employment tax returns;
- The Debtor must timely file all federal tax returns and pay all post-petition federal taxes;
- The Debtor must provide proof of Federal Trust Fund Deposits within three (3) business days of their deposit to Michael Smith at the IRS via facsimile at

(888) 301-8227 and to Donna Webb, IRS Counsel, via facsimile at (214) 659-8807;

- All tax deposits with the IRS shall be made through the IRS' EFTPS system; and
- The Debtor shall allow the inspection of the collateral and the Debtor's books and records at any time upon reasonable notice from the IRS.
- On or before June 23, 2017, the Debtor shall pay the IRS \$4,600 as adequate protection for its secured claim. The adequate protection payment shall be made payable to the Department of Treasury and sent to the United States Attorney's Office, 801 Cherry Street, Suite 1700, Burnett Plaza, Unit 4, Fort Worth, Texas 76102. Such payment shall continue each month until (i) termination of this Third Agreed Interim Order by its terms; (ii) further order of the Court; or (iii) confirmation of any plan of reorganization in this proceeding. All payments made under this paragraph shall be sent to the IRS through Donna Webb or as otherwise directed by the IRS in writing. All payments made under this paragraph shall be applied toward the payment of the IRS's secured claim.

20. **Access to Information**. At a mutually agreeable time, no later than five (5) business days after the IRS makes a request, the Debtor shall permit representatives, agents, and/or employees of the IRS to visit, inspect, have reasonable access to and consult with, as the case may be: (a) the Debtor's books and records, including any held by a prior or current property management company; (b) the personnel and/or agents of the Debtor (including any applicable management company) who are familiar with the Debtor's books and records or the information set forth therein; (c) the Debtor's property; and (d) such other information as the IRS may reasonably request. The Debtor and its representatives, agents, and/or employees shall cooperate and consult with, and provide to such representatives, agents, and/or employees of the IRS all such information as it may reasonably request.

21. **Proof of Insurance**. The Debtor shall deliver to the IRS proof that the Debtor's property is adequately insured against risk of loss as requested. The Debtor shall maintain insurance throughout the Debtor's bankruptcy case unless otherwise ordered by the Court.



22. **Maintenance of Property and Assets.** The Debtor shall maintain and take all steps necessary to keep its property and assets subject to the IRS Liens in good repair and condition, make all necessary replacements thereof, and operate its business safely, efficiently, and in compliance with all applicable laws, codes and ordinances. The Debtor shall not commit waste in connection with the property subject to the IRS Liens or the Cash Collateral. The Debtor shall preserve and maintain all licenses, privileges, franchises and certificates related to and/or necessary for the operation of its business.

23. **Reservation of Rights.** Notwithstanding anything to the contrary in this Third Agreed Interim Order:

(a) Entry of this Third Agreed Interim Order is without prejudice to any and all rights, remedies and claims that IRS may have against the Debtor or third parties, and does not bar or limit IRS from seeking further or additional relief, including without limitation, seeking additional adequate protection and seeking to terminate or modify the automatic stay;

(b) IRS reserves any and all rights to object to the entry of any order that alters or deviates from the terms and provisions of this Third Agreed Interim Order or for any other reason; and

(c) No act committed or action taken by IRS under this Third Agreed Interim Order shall be used, construed, or deemed to hold IRS to be in control of the Debtor, or the governance, management or operations of the Debtor for any purpose. Nor will IRS be held to be a “responsible person” or “owner or operator” or a person in “control” with respect to the governance, management or operation of the Debtor’s business (as such terms, or any similar terms, are used in the Internal Revenue Code, Comprehensive Environmental Response, Compensation and Liability Act, Bankruptcy Code, each as may be amended from time to time,

or any other federal or state law) by virtue of the interests, rights, and remedies granted to or conferred upon IRS under this Third Agreed Interim Order, including, without limitation, such rights and remedies as may be exercisable by IRS in connection with this Third Agreed Interim Order.

24. **Defaults Under the Third Agreed Interim Order.** Unless specifically waived in writing by IRS, the Debtor's right and authority to use Cash Collateral pursuant to the terms of this Third Agreed Interim Order shall immediately terminate upon the earlier of July 7, 2017 or the occurrence of any of the following (each, a "Default"):

(a) Ten (10) days following either IRS's delivery of a notice (either written or via email) of a breach by the Debtor of any obligation under this Third Agreed Interim Order which breach remains uncured or otherwise continues to exist at the end of such ten (10) day notice period;

(b) Conversion of any of the Debtor's Chapter 11 cases to a case under Chapter 7 of the Bankruptcy Code;

(c) The appointment of a trustee pursuant to Section 1104 of the Bankruptcy Code;

(d) The entry of any order modifying, reversing, revoking, staying, rescinding, vacating or amending this Third Agreed Interim Order without the express prior written consent of IRS (and no such consent shall be implied from any action, inaction, course of conduct or acquiescence by IRS; and

(e) The lifting of the automatic stay for any party other than IRS and/or any party foreclosing or otherwise seeking to enforce any lien or other right such other party may

have in and to any property of the Debtor's estate upon which IRS holds or asserts a lien or security interest.

25. **Binding Effect of Third Agreed Interim Order.** Subject to all reservation of rights in this Third Agreed Interim Order, the provisions of this Third Agreed Interim Order shall inure to the benefit of the Debtor and IRS and shall be binding upon the Debtor and IRS and their respective successors and assigns, including any trustee, agent, administrator or other fiduciary hereafter appointed as legal representative of the Debtor or with respect to property of the Debtor's estates, whether under Chapter 11 of the Bankruptcy Code or any subsequent Chapter 7 case, and shall also be binding upon all creditors of the Debtor and all other parties in interest.

26. **Subsequent Modification of Third Agreed Interim Order.** If any or all of the provisions of this Third Agreed Interim Order are hereafter modified, vacated or stayed, such modification, vacation or stay shall not affect the validity of any obligation, indebtedness or liability incurred by the Debtor to IRS from the Petition Date through the effective date of such modification, vacation or stay, or the validity or enforceability of any security interest, lien or priority authorized or created hereunder.

27. **Objection to IRS's Liens.** Following entry of this Order, Debtor and any other creditor or party in interest has sixty (60) days within which to object to: (a) the validity or amount of the indebtedness claimed by the IRS; or (b) the validity, enforceability or priority of IRS's liens on the Debtor's properties and assets. If the Debtor or any other creditor or party in interest does not object within sixty (60) days all such matters shall be conclusively established as stated herein, and such objections shall be deemed waived and forever barred.

28. **Consequence of the Third Agreed Interim Order.** IRS's consent to the Debtor's use of Cash Collateral is made in reliance on this Third Agreed Interim Order, and there shall not at any time be entered in this Case, without notice to IRS and an opportunity for a hearing, any other order which: (a) authorizes the Debtor to obtain credit or incur additional indebtedness secured by a lien or security interest in property in which IRS holds or asserts liens or security interests; or (b) grants to any claim a priority administrative claim status that is equal or superior to the status granted to IRS herein; unless, in each instance (i) IRS gives its prior written consent thereto, or (ii) such other order requires that IRS's aggregate claims evidenced by the Loan Documents and this Third Agreed Interim Order, including, without limitation, principal, interest, fees (including attorneys' fees), costs, and any and all other amounts which are or may become owing to IRS by the Debtor, be indefeasibly paid in full.

29. The entry of this Third Agreed Interim Order shall not prejudice or limit the rights of the Debtor, IRS or any other party in interest to seek additional relief with respect to the use of Cash Collateral, to seek different or additional adequate protection, or request modification or termination of this Third Agreed Interim Order. This Third Agreed Interim Order shall not limit or otherwise alter the rights of the Debtor, IRS or other parties in interest, except to the extent specifically provided for herein. Further, nothing contained herein shall waive or modify any rights and remedies which IRS has or may come to have under its lien, this Third Agreed Interim Order, at law, in equity, or otherwise.

30. No subsequent stay, modification, termination, failure to extend the terms of, or vacation of this Third Agreed Interim Order shall affect, limit, or modify any claim, right, or lien granted hereunder to IRS, nor shall any such stay, modification, or vacation limit, affect, or

modify the validity, enforceability, or perfection of any security interest, mortgage, lien, or priority granted herein.

31. The Debtor's authority to use Cash Collateral under this Third Agreed Interim Order terminates at 5:00 p.m. Central Time on the earlier of July 7, 2017, unless extended by further order of the Court.

32. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation of this Agreed Interim Order.

33. A hearing on the Motion for the continued use of cash collateral on a final basis is hereby set for July 5, 2017 at 1:45 p.m. before the Honorable Barbara J. Houser, United States Bankruptcy Court, Dallas Division, 1100 Commerce Street, 14<sup>th</sup> Floor, Courtroom #2, Dallas, Texas 75242. Notice of hearing shall be filed and served by the Debtor upon the twenty largest unsecured creditors, all governmental agencies, all secured creditors, all parties requesting notice and the U. S. Trustee.

**### END OF ORDER ###**

**AGREED AS TO FORM AND SUBSTANCE  
THIS MAY 30, 2017**

/s/ James G. Rea [05/30/17]

**J. MARK CHEVALLIER**

Texas State Bar 04189170

**JAMES G. REA**

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**PROPOSED ATTORNEYS FOR DEBTOR and  
DEBTOR-IN-POSSESSION**

/s/ Donna Webb [05/30/17]

**DONNA WEBB**

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**COUNSEL FOR INTERNAL REVENUE  
SERVICE**

CASH FLOW BUDGET		WEEK ENDING 06/09/2017	WEEK ENDING 06/16/2017	WEEK ENDING 06/23/2017	WEEK ENDING 06/30/2017	WEEK ENDING 07/07/2017
		06/03/2017 to 07/07/2017				
ALLIED ELECTRICAL GROUP OF TEXAS INC.						
BEGINNING CASH ON HAND	\$	32,216.45	\$	13,237.29	\$	73,292.91
RECEIVABLES CONSTRUCTION	\$	292,571.56	\$	69,498.36	\$	56,943.74
RECEIVABLES SERVICE	\$	69,141.61	\$	27,378.26	\$	223,073.20
RECEIVABLES RETENTION	\$	-	\$	-	\$	24,382.84
SUB TOTAL	\$	393,929.62	\$	110,113.91	\$	304,399.78
FIELD LABOR	\$	52,665.00	\$	10,533.00	\$	10,533.00
COMPANY P/R TAXES	\$	4,028.87	\$	805.77	\$	805.77
SUB TOTAL	\$	56,693.87	\$	11,338.77	\$	11,338.77
MATERIALS (see note #01 below)	\$	220,005.40	\$	7,603.59	\$	212,401.81
SUB CONTRACTS (see note #02 below)	\$	5,609.89	\$	820.00	\$	4,789.89
EQUIPMENT RENTAL (see note #03 below)	\$	5,231.55	\$	2,351.84	\$	2,879.71
SUB TOTAL	\$	230,846.84	\$	10,775.43	\$	220,071.41
SUB TOTAL FIELD CASH OUTLAY	\$	287,540.71	\$	22,114.20	\$	231,410.18
PRE OVERHEAD CASH BALANCE	\$	106,388.91	\$	87,999.70	\$	72,989.60
	\$	5,409.00	\$	5,409.00	\$	5,409.00
SALARIES	\$	2,068.94	\$	413.79	\$	413.79
COMPANY P/R TAXES	\$	29,113.94	\$	5,822.79	\$	5,822.79
SUB TOTAL	\$	7,500.00	\$	1,500.00	\$	1,500.00
SERVICE MATERIALS	\$	3,250.00	\$	650.00	\$	650.00
FUEL	\$	1,000.00	\$	-	\$	-
MOBILE PHONES	\$	144.07	\$	-	\$	-
INTERNET SERVICE	\$	250.00	\$	-	\$	-
OFFICE SUPPLIES	\$	2,500.00	\$	250.00	\$	2,500.00
EXPENSE REIMBURSEMENT	\$	3,177.91	\$	-	\$	-
INSURANCE	\$	482.53	\$	482.53	\$	-
TRUCK PAYMENT	\$	18,304.51	\$	2,400.00	\$	4,650.00
SUB TOTAL	\$	20,000.00	\$	2,000.00	\$	-
SALES TAX	\$	4,484.00	\$	4,484.00	\$	-
FRANCHISE TAX	\$	-	\$	-	\$	-
SUB TOTAL	\$	6,484.00	\$	6,484.00	\$	-
ADEQUATE PROTECTION - IRS ESTIMATED PROFESSIONAL'S FEES	\$	4,600.00	\$	-	\$	-
SUB TOTAL OVERHEAD CASH OUTLAY	\$	58,502.45	\$	14,706.79	\$	10,472.79
CASH BALANCE	\$	47,886.46	\$	73,292.91	\$	56,943.74
	\$	13,237.29	\$	13,055.32	\$	10,472.79
	\$	47,886.46	\$	56,943.74	\$	47,886.46
	\$		\$		\$	

note #01 - material are for multiple projects running at the same time, parts of the material cost are for job specified material packages. Material cost also includes distribution equipment, copper wire and common material purchased if not specified from the lowest quote given.

note #02 - subcontract cost are typically fire alarm systems, the cost include material, labor and equipment performed by a licensed sub contractor. Fire alarm systems are typically specified which dictates which sub contractor we use. Most projects have fire alarm systems.

note #03 - AEG does not own equipment. All equipment used for projects is rented. This saves the cost of the equipment, maintenance and insurance costs. We rent from all major companies based upon lowest quoted rental rates.

note # 04 - Debtor's professional's fees are subject to approval of pending applications for employment and approval of interim payment procedures