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ATTORNEY FOR DEBTOR(S)

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

| | | |
|--|---|------------------------------------|
| IN RE: | § | CASE NO.: 417-44538-RFN-11 |
| | § | |
| Diversified Power Systems, Inc. | § | CHAPTER 11 |
| | § | |
| DEBTOR-IN-POSSESSION | § | Expedited Hearing Requested |

**EXPEDITED MOTION FOR INTERIM AND FINAL ORDER AUTHORIZING
USE OF CASH COLLATERAL**

TO THE HONORABLE RUSSELL F. NELMS, UNITED STATES BANKRUPTCY JUDGE:

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, FORT WORTH, TEXAS 76107, BEFORE THE CLOSE OF BUSINESS ON NOVEMBER 15, 2017, WITH REGARD TO THE INTERIM RELIEF, AND AT LEAST FIVE (5) DAYS PRIOR TO THE FINAL HEARING WHICH WILL BE SET BY THE COURT AND NOTICED TO ALL PARTIES AFTER THE INTERIM HEARING.

A 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.

COMES NOW, Diversified Power Systems, Inc., ("Debtor"), Debtor-In-Possession herein, and moves the Court for the entry of Interim and Final Orders authorizing the use of the "Cash Collateral" of the Debtor. Relief on an expedited, interim basis, with limited notice, is warranted because the Debtor has insufficient cash with which to operate, and pay the adequate protection and retainer that are proposed for disbursement, even on a short-term basis, absent an Interim Order authorizing the use of cash collateral. In support hereof, the Debtor would respectfully show the Court as follows:

I.

Jurisdiction and Venue

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334(b) and the standing order of reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(B).

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

II.

Background

1. On 11/6/2017, ("the Petition Date"), Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.
2. Diversified Power Systems, Inc. is a generator sales and service company doing business at 900 N. Walnut Creek Dr., Suite 100, Mansfield, TX 76063-8042.
3. Diversified Power Systems, Inc. is a company that sells and services generators.
4. Diversified Power Systems, Inc. employs approximately 10 full time/part time employees.

5. Frost Bank, a SBA lender of Diversified Power Systems, Inc., is a secured creditor in this case, and asserts a security interest in all of Debtor's inventory, equipment and accounts receivables to secure the indebtedness owed to Frost Bank.

6. Diversified Power Systems, Inc. will generate "cash collateral" within the meaning of 11 U.S.C. §363(a), from its account receivables received from the different purchasers.

III.

Relief Requested

7. Through this Motion, the Debtor seeks authority to use the Cash Collateral on an interim basis, and on final basis pursuant to §363 of the United States Bankruptcy Code, Rule 4001(b) of the Federal Rules of Bankruptcy Procedure, and applicable local rules.

8. §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.

9. Movant, in order to be able to continue its business and to propose a plan of reorganization, must be authorized to utilize cash collateral in which Frost Bank maintains a security interest. The Debtor has no sources of cash with which to operate its business except through its account receivables.

10. Debtor has no alternative borrowing source and to remain in business must be permitted to sell its inventory for cash and on credit and to use the case proceeds of inventory and accounts receivables to pay it employees and to pay regular payments to Frost Bank toward its secured debt.

11. Debtor proposed to provide adequate protection to Frost Bank by granting a security

interest in its entire inventory and accounts receivable generated by Debtor during the pendency of its Chapter 11 Bankruptcy case. Further, Debtor shall pay to Frost Bank a monthly payment toward its secured claim.

12. Frost Bank has not consented to the Debtor's Interim for the Cash Collateral. However, it is believed that Frost Bank will approve the use of Cash Collateral provided that its interest is adequately protected. No legal or professional fees will be paid without express permission of the Court.

13. The Debtor requests expedited relief to use the Cash Collateral on an Interim Basis based upon disbursement payments to Frost Bank toward its secured claim and pursuant to Bankruptcy Rule 4001(b)(2). Absent expedited interim relief requested herein, the Debtor will suffer irreparable injury, loss or damage because it will not have the necessary cash available to fund operations and in turn protect the assets and business enterprises of the Debtor. Under the circumstances, the Debtor submits that the entry of a Cash Collateral Order on an interim basis is necessary to provide adequate protection to Frost Bank.

14. Pursuant to Bankruptcy Rule 4001(b), the Debtor also requests entry of a Cash Collateral Order on a Final Basis after appropriate 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. Thus the Debtor submits that entry of the Cash Collateral Order as a Final Order, after notice and hearing, is necessary to preserve the Debtor's estate and is, therefore, in the best interests of the creditors.

15. No previous Motion for Relief requested has been brought in this or any other Court.

16. Frost Bank will also be protected by continuing in place the liens and security interest

held by Frost Bank on the Petition Date by providing a continuing and replacement lien on Debtor's equipment, inventory and accounts receivables.

IV.

Notice

17. 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 that may be appointed under the Code, and such other entities as the Court may direct.

18. Notice of the Motion has been given to the Office of the United States Trustee for the Northern District of Texas, Frost Bank and each of the Debtor's twenty (20) largest unsecured creditors.

V.

Request for Expedited Relief

19. Because of the Debtor's continuing and ongoing business operations, it is necessary that interim relief be afforded the Debtor to use Cash Collateral to pay utility deposits, utilities, rent, wages and salaries.

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court enter an Interim Order on an expedited and interim basis, and after notice and hearing, enter a Final Order granting the relief requested herein and providing for such other and further relief the Court may deem the Debtor justly entitled.

Respectfully submitted,

/s/ Craig D. Davis
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served by me on the 15h day of November, 2017 to the following parties-in-interest via First Class Mail, ECF or Facsimile.

Office of the U.S. Trustee
United States Courthouse
1100 Commerce, Room 9C60
Dallas, TX 75242

Frost Bank
1000 Walnut Creek Dr.
Mansfield, TX 76063

Frost Bank
Chad Berry
c/o Adams, Lynch & Loftin, P.C.
3950 Highway 360
Grapevine, TX 76051-6741

and on the Debtor's twenty (20) largest creditors.

/s/ Craig D. Davis
Craig D. Davis
Jeffrey W. Ermis
Ronald W. Roberts
Attorney for the Debtor