

ENTERED

July 31, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Case No. 23-90558
PARADOX RESOURCES, LLC, <i>et al.</i>,	§	
	§	Chapter 11
Debtors.¹	§	
	§	(Jointly Administered)

**ORDER (I) APPROVING BIDDING PROCEDURES
IN CONNECTION WITH THE SALE OF SUBSTANTIALLY
ALL ASSETS, (II) APPROVING PROCEDURES RELATED TO THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (III) SCHEDULING BID
DEADLINE, AUCTION DATE, AND SALE HEARING DATE, AND
(IV) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

(Docket No. 180)

Upon the motion (the “Sale Motion”)² of Paradox Resources, LLC, *et al.* (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”), and the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”), seeking entry of an order (this “Bidding Procedures Order”) (i)(a) approving procedures in connection with the Sale³ of substantially all of the Debtors’ Assets; (b) approving procedures

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Paradox Resources, LLC (7152); Paradox Midstream, LLC (2127); Paradox Upstream, LLC (0256); Capital Commercial Development, Inc. (3124); Neuhaus Barrett Investments, LLC (5529); Four Corners Energy, LLC (8159); and Four Corners Pipeline, LLC (8748). The Debtors’ service address is: 500 Dallas Street, Suite 1600, Houston, Texas 77002.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Bidding Procedures attached as **Exhibit 1** to this Bidding Procedures Order, as applicable.

³ As used in this Bidding Procedures Order or in the attached Bidding Procedures, the term “Sale” means a sale of substantially all the Debtors’ Assets.

related to the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases; (c) scheduling an Auction and Sale Hearing and approving the form and manner of notice thereof; and (d) granting related relief; and (ii) entry of an order (the "Sale Order") after the Sale Hearing (a) authorizing the Sale of the Purchased Assets to the Successful Bidder, free and clear of Encumbrances, except as provided by the relevant Asset Purchase Agreement; (b) approving the assumption and assignment of the Assigned Contracts; and (c) granting related relief; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Sale Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Sale Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Sale Motion (the "Bidding Procedures Hearing"); and upon consideration of the record of the Bidding Procedures Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Sale Motion as it relates to entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and that the legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing, therefore;

IT IS FOUND AND DETERMINED THAT:

A. At the Bidding Procedures Hearing and in the Sale Motion, the Debtors articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court granting the relief set forth in this Bidding Procedures Order relating to the bidding process,

including approval of (1) the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”), (2) the Stalking Horse Protections, (3) the procedures described below for the determination of the amounts necessary to cure defaults under the Assigned Contracts (the “Cure Amounts”) so as to permit the assumption of the Assigned Contracts under section 365 of the Bankruptcy Code and their assignment to the Successful Bidder, and (4) the forms of the Sale Notice and Cure Notice.

B. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling a Sale Hearing to consider granting the other relief requested in the Sale Motion, including approval of the Sale and the transfer of the Assets designated as Purchased Assets, and the assignment of the designated Assigned Contracts, to the Successful Bidder free and clear of all Encumbrances and other interests pursuant to sections 363(f) and 365 of the Bankruptcy Code.

C. The Stalking Horse Protections (if any Stalking Horse Purchaser is designated), as limited by the approval granted in this Bidding Procedures Order, to be paid to a Stalking Horse Purchaser are: (1) are actual and necessary costs and expenses of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code; (2) commensurate to the real and substantial benefits conferred upon the Debtors’ estates by any Stalking Horse Purchaser; (3) fair, reasonable and appropriate in light of the size and nature of the proposed Sale, the commitments and accommodations of a Stalking Horse Purchaser that have been made for the benefit of the Debtors’ estates, the condition of the Purchased Assets, and the efforts that have been and will be expended by a Stalking Horse Purchaser; and (4) necessary to induce a Stalking Horse Purchaser to pursue the Sale and to continue to be bound by the Stalking Horse Agreement.

Accordingly, the Stalking Horse Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

D. The Bidding Procedures substantially in the form attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Assets.

E. The Debtors' proposed Sale Notice is appropriate. Service of the Sale Notice as provided for in the Sale Motion and this Bidding Procedures Order is reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction and the Sale Hearing, and no other or further notice is required.

F. The Debtors' proposed Cure Notice is adequate and reasonably designed to provide notice to contract counterparties of the Debtors' executory contracts and unexpired leases that may be assumed and assigned to a Successful Bidder.

G. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

H. To the extent any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. All objections to the relief requested in the Sale Motion relating to the Bidding Procedures (and all reservations of rights included in any such objections) that have not been withdrawn, waived or settled are overruled except as reflected in the provisions of this Bidding Procedures Order.

Bidding Procedures

2. The Bidding Procedures attached hereto as **Exhibit 1** are APPROVED and fully incorporated into this Bidding Procedures Order by reference. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety. The Bidding Procedures shall govern all Bids and bidding procedures relating to the Sale of the Assets. Any party desiring to submit a Bid shall do so strictly in accordance with the terms of the Bidding Procedures and this Bidding Procedures Order. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures, including incurring and paying costs and expenses, in accordance with any applicable orders of this Court and corresponding approved budget(s).

3. The Bid Deadline shall be **August 28, 2023 at 5:00 p.m. (prevailing Central Time)**.

4. The Good Faith Deposits of all Qualified Bidders shall be held in escrow by the Debtors or their designated agent, and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the Bidding Procedures or any applicable escrow agreement.

5. To the extent the Debtors' prepetition secured lender, Washington Federal Bank ("WaFd"), desires to submit a competing credit bid for the Assets, WaFd shall notify the Debtors in writing of its intention to credit bid and the amount of the initial credit bid no later than the Bid Deadline (the "Credit Bid Notification"). If WaFd indicates in a Credit Bid Notification that it intends to credit bid at the Auction, then WaFd shall no longer be a Consultation Party (defined

below) and shall not receive the consultation rights with respect to determination of Qualified Bids, Qualified Bidders, the Auction, or the selection of the Successful Bidder or Back-Up Bidder, each as defined and more fully set forth below. If, prior to the Auction, WaFd revokes the Credit Bid Notification in writing and notifies the Debtors that it no longer intends to credit bid, then WaFd shall again be afforded the consultation rights described in the Bidding Procedures.

6. For the avoidance of doubt, and except with respect to a credit bid that may be submitted by WaFd in its sole discretion, all Bids from any other Potential Bidder must be submitted in cash; *provided, however*, that any Stalking Horse Purchaser shall be entitled to credit bid its Bid Protections in accordance with the provisions of the Bidding Procedures.

7. Following the receipt of all timely Bids, the Debtors shall have the right, in consultation with WaFd (subject to the foregoing paragraph), and the Official Committee of Unsecured Creditors (the “Committee,” and together with WaFd, the “Consultation Party(ies)”), to determine whether a Bid is a Qualified Bid in accordance with the provisions governing Qualified Bids in the Bidding Procedures. The Debtors shall notify each Qualified Bidder and the Consultation Parties promptly upon a determination that a Bid constitutes a Qualified Bid.

8. The auction for the Debtors’ Assets (the “Auction”) shall be held at **10:00 a.m. (prevailing Central Time) on August 31, 2023** at the offices of Evercore Group L.L.C., 909 Fannin, Suite 1800, Houston, Texas 77002. The Debtors may permit parties to attend in person or by Zoom video conference pursuant to instructions to be provided by the Debtors to parties entitled to attend the Auction at a later date.

9. As soon as reasonably practicable after the conclusion of the Auction, but no later than the first business day following the conclusion of the Auction, the Debtors shall file notice of the identity of the Successful Bidder, the Back-Up Bidder, if any, and the respective amounts of

such Bids, and shall serve such notice by first class United States Mail to: (i) the Debtors' Master Service List; (ii) all contract counterparties to the Debtors' executory contracts and unexpired leases; and (iii) and any party requesting notice pursuant to Bankruptcy Rule 2002.

10. Objections, if any, to (i) the manner in which the Auction was conducted and selection of the Successful Bidder (an "Auction Objection"), or (ii) solely with respect to counterparties to Assigned Contracts, the specific identity of, and adequate assurance of future performance provided by, the Successful Bidder (an "Adequate Assurance Objection"), must: (a) set forth in writing and describe with specificity the factual and legal basis for the Auction Objection or Adequate Assurance Objection, as applicable; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; and (c) be filed with the Clerk of the Court no later than **September 4, 2023 at 5:00 p.m. (prevailing Central Time)** (the "Auction Objection Deadline" and "Adequate Assurance Objection Deadline"). Failure to timely or appropriately file an Auction Objection by the Auction Objection Deadline shall be deemed to be consent to the Debtors' selection of the Successful Bidder and the manner in which the Auction was conducted. Failure to timely or appropriately file an Adequate Assurance Objection by the Adequate Assurance Objection Deadline shall bar contract counterparties from objecting to assumption by the Debtors and assignment to the Successful Bidder of the relevant Assigned Contract on grounds of adequate assurance of future performance.

11. If the Auction is conducted pursuant to the Bidding Procedures, each Qualified Bidder attending shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code, with respect to the bidding or the Sale. The Auction shall be recorded or transcribed.

12. Subject to the terms of the Bidding Procedures, the Debtors shall determine, in consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best offer for the Purchased Assets, giving effect to any additional liabilities to be assumed by the relevant Qualified Bidder and any additional costs which may be imposed on the Debtors. For purposes of valuing Qualified Bids and determining the Successful Bid, the full face amount of a credit bid from WaFd, if any, shall be deemed to have the same value as the equivalent amount of cash. The Debtors shall notify the applicable Consultation Parties promptly upon the selection of the Successful Bid.

13. The Sale Hearing shall be held before the Court on **September 6, 2023 at 9:00 a.m. (prevailing Central Time)**. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties, without further notice to creditors or parties in interest other than by announcement in open Court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtors' Chapter 11 Cases.

14. The Successful Bidder shall appear at the Sale Hearing and be prepared to testify, if necessary, in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner and provide adequate assurance of its future performance under any and all Assigned Contracts to be assumed and assigned as part of the proposed Sale.

Sale Notice Procedures

15. The Sale Notice, substantially in the form attached to the Sale Motion, is hereby approved. The Sale Notice is reasonably calculated to provide sufficient notice to all parties in interest of the Debtors' intent to consummate the Sale with the Successful Bidder and constitutes

adequate notice of the Sale. For the avoidance of doubt, the following procedures as set forth in the Sale Notice are hereby approved:

- (i) The Debtors shall serve the Sale Notice within five (5) business days after the entry of the Bidding Procedures Order upon all parties in interest including, for the avoidance of doubt: (a) counsel for the Committee in the Chapter 11 Cases; (b) the United States Trustee for the Southern District of Texas; (c) all other parties known to the Debtors who have or may have asserted liens, claims, encumbrances, or interests in or against any of the Assets; (d) all of the Debtors' creditors as required by Bankruptcy Rule 2002(a)(2); (e) federal, state, and local taxing authorities; (f) all of the counterparties to the executory contracts and unexpired leases as set forth on Schedule 1 to the Cure Notice as may be amended, modified, or supplemented; (g) all parties that have requested notice pursuant to Bankruptcy Rule 2002; and (h) all parties known to have expressed an interest in a transaction with respect to all or a part of the Assets.
- (ii) Any objections to the relief requested in this Sale Motion as relates to the Sale of the Assets to the Successful Bidder (a "Sale Objection") must: (a) set forth in writing and describe with specificity the factual and legal basis for the Sale Objection; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; and (c) be filed with the Clerk of the Court no later than **5:00 p.m. (prevailing Central Time) on August 28, 2023** (the "Sale Objection Deadline").
- (iii) The failure of any person or entity to file a Sale Objection by the Sale Objection Deadline shall be deemed a consent to the Sale of the Assets to the Successful Bidder and the other relief requested in the Sale Motion. Further, the failure to file a Sale Objection by the Sale Objection Deadline shall be a bar to the assertion, at the Sale Hearing or thereafter, of (a) any objection to the Sale Motion; (b) the Sale of the Assets free and clear of an liens, claims, and encumbrances; and (c) the Debtors' consummation and performance of an Asset Purchase Agreement with the Successful Bidder.
- (iv) If a Sale Objection is timely filed by the Sale Objection Deadline and the relevant parties are unable to resolve the Sale Objection prior to the commencement of the Sale Hearing, such Sale Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court.

Cure Notice Procedures

16. The Cure Notice, substantially in the form attached to the Sale Motion, is hereby approved. The Cure Notice to be provided and the method of service constitutes good, proper, and adequate notice, and is reasonably calculated to provide sufficient notice to all contract

counterparties of: (i) the Debtors' intent to assume and assign certain executory contracts and unexpired leases to the Successful Bidder, and (ii) the proposed Cure Amount associated with such assumption and assignment. For the avoidance of doubt, the following procedures as set forth in the Cure Notice are hereby approved:

- (i) The Debtors shall cause the Cure Notice to be served to any counterparties to the Debtors' executory contracts and unexpired leases that may be designated as Assigned Contracts and assumed and assigned to the Successful Bidder, as set forth in Schedule 1 attached to the Cure Notice, not later than five (5) business days after entry of the Bidding Procedures Order. The Cure Notice shall provide the counterparties to such executory contracts and unexpired leases with notice of the Cure Amount that the Debtors believe must be cured upon assumption and assignment to the Successful Bidder as required under Bankruptcy Code section 365.
- (ii) Any objections to the assumption and assignment of any executory contract or unexpired lease identified in the Cure Notice, including, but not limited to, the Cure Amounts set forth in the Cure Notice (a "Contract Objection"), must: (a) set forth in writing and describe with specificity the factual and legal basis for the Contract Objection; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; and (c) be filed with the Clerk of the Court no later than **5:00 p.m. (prevailing Central Time) on August 28, 2023** (the "Contract Objection Deadline").
- (iii) If a counterparty to an executory contract or unexpired lease set forth on Schedule 1 of the Cure Notice fails to file a Contract Objection by the Contract Objection Deadline, then the Cure Amount set forth in the Cure Notice will be binding upon the contract counterparty, and all parties in interest, for all purposes in the Chapter 11 Cases and otherwise. All such counterparties to those executory contracts and unexpired leases on Schedule 1 of the Cure Notice will: (a) be forever barred from objecting to the Cure Amounts with respect to such executory contracts and unexpired leases and the Cure Amounts identified in the Cure Notice with respect to such executory contracts and unexpired leases shall be the only amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults thereunder if the Successful Bidder ultimately decides to have such executory contracts and unexpired leases assumed by the Debtors and assigned to it; (b) other than an Adequate Assurance Objection on the basis of adequate assurance of future performance by the Successful Bidder, be deemed to have consented to the assumption and assignment if the Successful Bidder designates such contract or lease as an Assigned Contract; and (c) be forever barred and estopped from asserting or claiming against the Debtors or Successful Bidder, as applicable, that any additional amounts are due, other defaults exist, other conditions to assignment must be satisfied under such executory contracts or

unexpired leases, or that there is any objection or defense to the assumption and assignment.

- (iv) In the event that the Debtors and the counterparty cannot resolve the Cure Objection, the Debtors shall segregate the disputed Cure Amount (each, a “Disputed Cure Amount”) pending the resolution of such dispute by the Court or mutual agreement of the parties; *provided, however*, that the Debtors shall not be required to segregate any Disputed Cure Amount if the applicable Asset Purchase Agreement provides for payment of Cure Amounts by the Successful Bidder.
- (v) If a counterparty to an executory contract or unexpired lease set forth on Schedule 1 of the Cure Notice timely files a Contract Objection, whether based on Cure Amount or any other alleged cause or claim, then, to the extent the relevant parties are unable to resolve the Contract Objection prior to the commencement of the Sale Hearing, such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court.
- (vi) If at any time after the Cure Notice is served (but prior to the Sale pursuant to any Asset Purchase Agreement) the Debtors: (a) amend Schedule 1 to the Cure Notice and includes additional executory contracts or unexpired leases; or (b) receives notice from the Successful Bidder that additional prepetition executory contracts and or unexpired leases are to be designated as Assigned Contracts under the Asset Purchase Agreement, then the Debtors shall serve a supplemental cure notice (a “Supplemental Cure Notice”) by first class mail, facsimile, electronic transmission, or overnight mail on the contract counterparty (and its attorney, if known) to each such contract (a “Previously Omitted Contract”) within three (3) business days of the amendment to the Cure Notice, or the receipt of notice of designation as an Assigned Contract. Each Supplemental Cure Notice shall set forth the following: (i) the name and address of the contract counterparty; (ii) notice of the proposed effective date of the assignment (subject to the rights of the Debtors or the Successful Bidder to withdraw such request for assumption and assignment of the Assigned Contract prior to closing); (iii) identification of the Assigned Contract; and (iv) the Cure Amount, if any.
- (vii) Unless the contract counterparty to the Previously Omitted Contract properly files a Contract Objection to the Supplemental Cure Notice within fourteen (14) days of service of the Supplemental Cure Notice, the Debtors shall obtain an order of the Court fixing the Cure Amounts and approving the assumption and assignment of the Previously Omitted Contract as an Assigned Contract. If a Contract Objection is timely filed and served with respect to a Previously Omitted Contract, and the relevant parties are unable to resolve the Contract Objection, such Contract Objection will be adjudicated at the Sale Hearing or, if the Sale Hearing date has passed, at such other date and time as may be fixed by the Court.
- (viii) For the avoidance of doubt, the inclusion of an executory contract or unexpired lease on Schedule 1 of the Cure Notice shall not obligate the Debtors to assume and

assign any executory contract or unexpired lease listed thereon, and the rights of the Debtors or Successful Bidder to modify the list of Assigned Contracts, including to remove any contracts or leases from such list, are expressly reserved. Only those executory contracts and unexpired leases designated as Assigned Contracts at closing will be assumed and assigned to the Successful Bidder.

17. The Successful Bidder may designate additional contracts and leases for assumption and assignment at any time up until the earlier of: (i) the designation deadline set forth in the applicable Asset Purchase Agreement, or (ii) the date of the closing of the Sale.

18. If an executory contract or unexpired lease is assumed and assigned pursuant to the Sale Order or other order of the Court, and unless otherwise agreed by the Debtors, Successful Bidder and a counterparty to an Assigned Contract, the counterparty to such Assigned Contract shall receive the applicable Cure Amount, if any (except for Disputed Cure Amounts), no later than five (5) business days following the closing of the Sale, with payment to be made pursuant to the terms of the Successful Bidder's Asset Purchase Agreement. Except to the extent otherwise provided in the Successful Bidder's Asset Purchase Agreement, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising under or in connection with the Assigned Contracts after the assumption and assignment thereof pursuant to section 365(k) of the Bankruptcy Code.

19. Notwithstanding any provision in this Bidding Procedures Order or the Bidding Procedures to the contrary, this Bidding Procedures Order does not satisfy, and the Court has not yet determined if the Debtors have satisfied, the requirements of section 365 of the Bankruptcy Code for any particular Assigned Contract, including those relating to the Cure Amounts or the provision of adequate assurance of future performance. No Assigned Contract shall be deemed assumed or assigned until the later of: (a) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contract, (b) the date the Sale is closed, or (c) the

date the applicable Cure Amount is paid. The Successful Bidder shall have no rights in and to any particular Assigned Contract until such time as the particular Assigned Contract is assumed and assigned to the Successful Bidder.

20. The inclusion of a contract or lease and related Cure Amount on a Cure Notice or Supplemental Cure Notice, if any, shall not constitute or be deemed to be a determination or admission by the Debtors, a Successful Bidder, or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Amount constitutes a claim against the Debtors in such amount (all rights with respect thereto being expressly reserved). The Debtors reserve all of rights, claims and causes of action with respect to each contract or lease listed on the Cure Notice or any Supplemental Cure Notice.

Stalking Horse Provisions

21. Subject to the requirements provided in the Interim DIP Order and any Final DIP Order entered by the Court, the Debtors are authorized, but not directed, to select one or more bidders to act as Stalking Horse Purchasers(s) and to enter into Stalking Horse Agreement(s) with such Stalking Horse Purchaser(s).

22. If the Debtors select a Stalking Horse Purchaser on or before July 28, 2023 (the “Stalking Horse Designation Deadline”) or such later date as determined by the Debtors with the consent of WaFd, the Debtors shall promptly file with the Court a notice that contains information regarding the Stalking Horse Purchaser and the Stalking Horse Bid, including any Stalking Horse Protections, and attaches the proposed Stalking Horse Agreement (the “Stalking Horse Selection Notice”); *provided, however*, that the Debtors may extend the Stalking Horse Designation Deadline in consultation with the Consultation Parties.

23. Parties in interest may file objections (“Stalking Horse Objections”) to the designation of the Stalking Horse Purchaser or any of the terms of the Stalking Horse Agreement, including to any of the proposed Stalking Horse Protections, within ten (10) days after service of the Stalking Horse Selection Notice (the “Stalking Horse Objection Deadline”). If a timely Stalking Horse Objection is filed and served in accordance with this Bidding Procedures Order, the proposed designation of the Stalking Horse Purchaser and the Stalking Horse Protections under such Stalking Horse Agreement will not be deemed approved, and the Stalking Horse Protections may not be paid, until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors or by further order of the Court. If no timely Stalking Horse Objection is filed and served with respect to a Stalking Horse Bid in accordance with the Bidding Procedures and this Bidding Procedures Order, the Stalking Horse Protections contemplated by such Stalking Horse Bid shall be deemed approved without further order of the Court upon the expiration of the Stalking Horse Objection Deadline.

24. Subject to the foregoing paragraph, the Stalking Horse Protections set forth in any Stalking Horse Selection Notice and Stalking Horse Bid are deemed APPROVED and shall be paid in cash when and as set forth in the Stalking Horse Agreement (if any); *provided, however*, the Stalking Horse Protections shall not be payable on any portion of a Stalking Horse Bid that is a credit bid. The Debtors’ obligation to pay the Stalking Horse Protections shall constitute, pursuant to sections 503 and 507 of the Bankruptcy Code, an administrative expense claim against each of the Debtors’ bankruptcy estates. The Stalking Horse Protections payable pursuant to the terms of the Stalking Horse Agreement shall be payable without any further order of this Court.

25. The Debtors' right to seek this Court's approval of one or more Stalking Horse Purchasers, with notice and a hearing, is hereby preserved.

Miscellaneous Provisions

26. Prior to service, the Debtors may make final, non-substantive edits to the Bidding Procedures, Sale Notice, and Cure Notice consisting solely of correcting typographical and grammatical errors, making stylistic and formatting improvements, adding relevant dates and deadlines, and adding any revisions announced on the record at the Bidding Procedures Hearing, each of which shall be deemed approved by this Bidding Procedures Order without further notice or hearing.

27. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

28. In the event that there is a conflict between this Bidding Procedures Order or the Bidding Procedures, this Bidding Procedures Order shall control and govern.

29. In the event that there is a conflict between the Sale Motion, Bidding Procedures and any Asset Purchase Agreement, the Bidding Procedures shall control and govern.

30. All time periods set forth in this Bidding Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

31. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable.

32. The Debtors, the Committee, and WaFd agree that in the event of any dispute regarding the Sale Process outlined in the Bidding Procedures or this Bidding Procedure Order: (i) any such party may seek an emergency hearing requesting that the Court resolve such dispute; and

(ii) the other parties shall consent to such request for an emergency hearing.

33. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Bidding Procedures Order.

Signed: July 31, 2023.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

PARADOX RESOURCES, LLC, *et al.***BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the proposed sale of certain tangible and intangible assets (the “Purchased Assets”) of Paradox Resources, LLC, *et al.* (collectively, the “Debtors”) that own the Purchased Assets (in such capacity, the “Sellers”), in connection with the Debtors’ jointly administered chapter 11 cases the (“Chapter 11 Cases”) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), lead Case No. 23-90558.

On July [●], 2023, the Bankruptcy Court entered an Order (the “Bidding Procedures Order”) [ECF # ●], which, among other things, authorized the Debtors to solicit bids and approved these Bidding Procedures, which are to be employed by the Debtors in connection with the proposed sale or sales of, or acquisition transactions of all or substantially all of, the Debtors’ assets and other related interests, free and clear of all liens, claims, encumbrances and other interests (collectively, the “Encumbrances”), other than those Encumbrances permitted by a Stalking Horse Agreement or Asset Purchase Agreement (as defined below) (any and each such transaction, a “Sale”), on an AS-IS, WHERE-IS WITH ALL FAULTS BASIS.

KEY DATES

Date and Time¹	Applicable Deadline
July 28, 2023	Stalking Horse Designation Deadline ²
Ten (10) days after service of a Stalking Horse Selection Notice	Stalking Horse Objection Deadline
August 28, 2023 at 5:00 p.m.	Bid Deadline
August 28, 2023 at 5:00 p.m.	Sale Objection Deadline
August 28, 2023 at 5:00 p.m.	Contract Objection Deadline
August 30, 2023 at 10:00 a.m.	Qualified Bids Determined
August 31, 2023 at 10:00 a.m.	Auction Date
September 4, 2023 at 5:00 p.m.	Auction Objection and Adequate Assurance Objection Deadline
September [●], 2023 at [●]	Sale Hearing

STALKING HORSE PURCHASER AND STALKING HORSE PROTECTIONS

1. The Debtors have been authorized, but are not obligated, in an exercise of their business judgment and in consultation with the Consultation Parties³ to: (i) designate one or more

¹ All times are prevailing Central Time.

² The Debtors may extend the Stalking Horse Designation Deadline with the consent of the DIP Lender.

³ Subject to Paragraph 13, the “Consultation Parties” shall consist of Washington Federal Bank (the “DIP Lender” or “WaFd”), and the Official Committee of Unsecured Creditors (the “Committee”).

bidders to act as qualified stalking horse bidders in connection with the Sale (each, a “Stalking Horse Purchaser,” and the bid of a Stalking Horse Purchaser a “Stalking Horse Bid”), and enter into purchase agreements with respect to a Sale with such Stalking Horse Purchaser(s) (each, a “Stalking Horse Agreement”) and (ii) in connection with any Stalking Horse Agreement with a Stalking Horse Purchaser, (a) provide a breakup fee (the “Breakup Fee”); (b) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “Expense Reimbursement”); and (c) agree to provide minimum overbid protections as approved by the Bankruptcy Court (together with the Breakup Fee and Expense Reimbursement, the “Stalking Horse Protections”).

2. The Debtors will provide notice of each such Stalking Horse Purchaser, Stalking Horse Protections (including the amount and calculation thereof) and Stalking Horse Agreement as outlined in the Bidding Procedures Order (the “Stalking Horse Selection Notice”). Parties in interest may file an objection (a “Stalking Horse Objection”) to the designation of the Stalking Horse Purchaser or any of the terms of the Stalking Horse Agreement, including to any of the proposed Stalking Horse Protections, within ten (10) days after service of the Stalking Horse Selection Notice (the “Stalking Horse Objection Deadline”). If a timely Stalking Horse Objection is filed and served in accordance with the Bidding Procedures Order, the proposed designation of the Stalking Horse Purchaser and the Stalking Horse Protections under such Stalking Horse Agreement will not be deemed approved, and such Stalking Horse Protections may not be paid pursuant to the Bidding Procedures Order, until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors (in consultation with the Consultation Parties) or by further order of the Bankruptcy Court. If no timely Stalking Horse Objection is filed and served with respect to a Stalking Horse Bid in accordance with these Bidding Procedures and the Bidding Procedures Order, the Stalking Horse Protections contemplated by such Stalking Horse Bid shall be deemed approved without further order of the Bankruptcy Court upon the expiration of the Stalking Horse Objection Deadline.

3. The Debtors have agreed that their obligation to pay the Stalking Horse Protections pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, and, to the extent owed by the Debtors, constitute an administrative expense claim under sections 503(b) and 507 of the Bankruptcy Code against the Debtors, and payable in accordance with the terms and conditions of the Stalking Horse Agreement and the Bidding Procedures Order.

ASSETS TO BE SOLD AND ASSET PURCHASE AGREEMENT

4. The Debtors seek to consummate a Sale of the Purchased Assets and will consider bids (the “Bids”) to acquire the Purchased Assets as a going-concern to the extent that the consummation of such transaction maximizes value for stakeholders. The Debtors may, in their discretion, choose to accept Bids from Potential Bidders on certain Purchased Assets constituting less than all of the Purchased Assets available for Sale (*i.e.*, a “Lot Bid”) to the extent the Debtors believe one or more of such transactions may maximize value for stakeholders and can be accomplished efficiently; *provided, however*, (i) the Potential Bidder should notify the Debtors’ investment banker of its intent to submit such a Bid prior to the Bid Deadline and identify the specific Purchased Assets to be included in the Lot Bid; (ii) the Potential Bidder understands that, in evaluating and determining Qualified Bids, the Debtors will give more weight to Bids to acquire the Purchased Assets as a going-concern; and (iii) the Lot Bid(s), to the extent they do not provide

for Sale transaction(s) which would collectively result in the disposition of substantially all of the Debtors' Assets, must be sufficient in the aggregate to pay the outstanding indebtedness of WaFd, including the DIP Facility.

5. The Sale of the Purchased Assets is on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Sellers, their agents or estates, except to the extent set forth in the Asset Purchase Agreement of the Successful Bidder (as defined herein) as approved by the Bankruptcy Court. Pursuant to the form of Asset Purchase Agreement, the Successful Bidder shall acquire the Purchased Assets free and clear of any and all Encumbrances, subject to certain other conditions and except as otherwise provided in an Asset Purchase Agreement, with such Encumbrances to attach solely to the net proceeds of the Sale with the same validity and priority as such Encumbrances applied against the Purchased Assets.

THE BIDDING PROCEDURES

A. Provisions Governing Qualifications of Bidders

6. Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than a Stalking Horse Purchaser, who wishes to participate in the bidding process (a "Potential Bidder") must deliver the following to the Debtors:

- (i) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such Bid; and
- (ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Sellers to a Potential Bidder) in form and substance satisfactory to the Debtors.

7. As promptly as practicable after delivery of all materials required above, the Debtors will determine and will notify such party of their status as a Potential Bidder. The Debtors will regularly notify the DIP Lender and the Committee of the parties designated as Potential Bidders.

8. For the avoidance of doubt, and unless otherwise ordered by the Bankruptcy Court after notice and a hearing in connection with a timely filed Stalking Horse Objection, any Stalking Horse Purchaser designated by the Debtors shall be considered a Qualified Bidder and any Stalking Horse Agreement shall be a Qualified Bid (as defined below).

9. For the avoidance of doubt, and unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the DIP Lender shall be deemed a Qualified Bidder and any such credit Bid submitted by the DIP Lender on account of its secured claims under the DIP Loan Documents and Prepetition Documents (each as defined in the Final DIP Order) (subject to satisfaction of any senior secured claims, to the extent applicable) shall be deemed a Qualified Bid; *provided, however*, that nothing herein or in the Bidding Procedures Order shall be deemed to impair or otherwise limit the Committee's ability to object to any credit bid or assert the "Challenge" rights set forth in the Final DIP Order. As soon as reasonably practicable after a Challenge, if any, is

filed with the Bankruptcy Court, the parties shall each consent to an expedited process and use reasonable efforts to have the Bankruptcy Court resolve the Challenge prior to the Sale Hearing. To the extent a Challenge is pending at the time of the Sale Hearing and the Bankruptcy Court has not ruled on the merits of such Challenge, without prejudice to the pending Challenge, a Qualified Bidder may still credit bid up to the full amount of its contested secured claim.

B. Due Diligence

10. The Debtors, with the assistance of their investment banker and other advisors, will provide any Potential Bidder such due diligence access or additional information as the Debtors, in their reasonable discretion, deem appropriate, which may include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information. The due diligence period will extend through and including the Auction. Unless otherwise deemed reasonably appropriate by the Debtors after consultation with the Consultation Parties, the Debtors and their representatives and advisors shall not be obligated to furnish any due diligence information after the Auction. Diligence inquiries should be made to the Debtors' investment banker using the contact information below:

Evercore Group L.L.C.

Attn: Robert Pacha

Tel: (713) 403-2441

Fax : (713) 403-2444

Email: Pacha@Evercore.com

C. Bid Deadline

11. A Potential Bidder that desires to make a Bid will deliver written copies of its Bid via email to the following parties (collectively, the "Bid Notice Parties"): (i) the Debtors, Attn: Douglas J. Brickley (dbrickley@stout.com) and Todd A. Brooks (toddb@paradoxresources.com); (ii) investment banker to the Debtors, Attn: Robert Pacha (pacha@evercore.com); and (iii) counsel for the Debtors, Attn: Matthew S. Okin (mokin@okinadams.com) and Ryan A. O'Connor (roconnor@okinadams.com).

12. Bids must be actually received by the Bid Notice Parties by a date no later than **5:00 p.m. (prevailing Central Time) on August 28, 2023** (the "Bid Deadline"). The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties.

D. Credit Bid Notification

13. To the extent the DIP Lender desires to submit a competing credit bid for the Purchased Assets, the DIP Lender shall notify the Debtors in writing of its intention to credit bid and the amount of the initial credit bid no later than the Bid Deadline (the "Credit Bid Notification"). If the DIP Lender indicates in a Credit Bid Notification that it intends to credit bid at the Auction, the DIP Lender shall not be considered a Consultation Party and shall not receive the consent/consultation rights with respect to determination of Qualified Bids, Qualified Bidders, the Auction, or the selection of the Successful Bidder or Back-Up Bidder, each as defined and more fully set forth herein. In the event that the DIP Lender subsequently revokes the Credit Bid

Notification in writing and notifies the Debtors that it no longer intends to credit bid then the DIP Lender shall again be afforded the consent rights and consultation rights described in these Bidding Procedures.

E. Provisions Governing Qualified Bids

14. A Bid will be considered a “Qualified Bid” only if the Bid is submitted by a Potential Bidder and complies with all of the following:

- a. it specifies the assets that are included in the Bid and, to the extent a Stalking Horse Purchaser is designated, states that such Qualified Bidder offers to purchase those assets included in the applicable Stalking Horse Agreement upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in the applicable Stalking Horse Agreement;
- b. it includes a signed writing stating that the Potential Bidder’s offer is binding on such Potential Bidder and irrevocable until the selection of the Successful Bidder, *provided, however*, that if such Potential Bidder is selected as the Successful Bidder or the Back-Up Bidder (each, as defined below) its offer shall remain irrevocable until the earlier of (i) the closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (ii) the date that is thirty (30) days after the Sale Hearing;
- c. it includes written confirmation that there are no conditions precedent to the Potential Bidder’s ability to enter into a definitive agreement, including due diligence or financing contingencies, and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;
- d. it includes a duly authorized and executed copy of a purchase agreement, based on the Asset Purchase Agreement or the Stalking Horse Agreement (if one exists), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “Purchase Price”), together with redline copies marked to show any amendments and modifications to the Asset Purchase Agreement or the Stalking Horse Purchase Agreement (if any);
- e. it includes written confirmation that the Bid is not contingent upon such Potential Bidder obtaining financing and includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, proof of funds, and written confirmation establishing the ability and authority of the Potential Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement, including payment of the Purchase Price and providing adequate assurance of future performance under all contracts to be assumed and assigned in the Sale;

- f. it provides for the repayment of all other costs payable by such Potential Bidder, simultaneously with the closing of the Sale, including the Stalking Horse Protections (if any);
- g. in the event that there is a Stalking Horse Purchaser, and the Potential Bidder wishes to bid on the same assets that are included in the Stalking Horse Agreement, it has a value to the Debtors, determined in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (i) the aggregate amount of the Stalking Horse Protections (if any), plus (ii) \$500,000 (the "Minimum Initial Overbid Amount");
- h. it identifies with particularity which executory contracts and unexpired leases the Potential Bidder wishes to assume and provides details of the Potential Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance to the counterparties to such Assumed Executory Contracts;
- i. it includes an acknowledgement and representation that the Potential Bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its Bid; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (iv) with the exception of any Stalking Horse Purchaser, is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its Bid;
- j. it includes evidence, in form and substance reasonably satisfactory to the Debtors of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Asset Purchase Agreement;
- k. it is accompanied by a good faith deposit (a "Good Faith Deposit") in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the Purchase Price; *provided that* (i) any Potential Bidder submitting a Bid with a credit bid component pursuant to section 363(k) of the Bankruptcy Code shall not be required to submit a Good Faith Deposit;
- l. it contains full disclosure of the identity of each entity that will be bidding for the Purchased Assets (including any equity holders or other financial backers, if the Potential Bidder and/or other bidding entity is formed for the purpose of

submitting Bids or consummating a Sale transaction) or otherwise participating in connection with such Bid,⁴ and the complete terms of any such participation, as well as disclose the proposed senior management, organizational form, and business conducted by each entity;

- m. it contains a reasonable description of how the Potential Bidder intends to treat current employees of the Sellers;
- n. it contains a commitment to close the Sale of the Purchased Assets no later than October 6, 2023;
- o. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties;
- p. it identifies each regulatory and third-party approval required for the Potential Bidder to consummate a proposed Sale transaction, if any, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals;
- q. with respect to any proposed assumption, assignment, and/or transfer of any rights and interests in any federal oil and gas leases and/or rights-of-way (the “Federal Leases”) or in any state leases or grants for which regulatory approval is required to transfer (collectively the “Consent Leases”), the Bid must be accompanied by a statement that the Potential Bidder (i) is or has the capacity to become qualified to hold a Consent Lease under 43 CFR Subchapter C for Federal Leases and is otherwise qualified to own Consent Leases under applicable law; (ii) understands that it may be subject to bonding or other financial assurances as required by applicable government regulators; (iii) understands that it will be subject to all applicable monetary and operational regulations pertaining to such Consent Leases, specifically including, but not limited to, all decommissioning obligations pertaining to the interests acquired through the Consent Leases; and (iv) understands that the Consent Leases are otherwise regulated by various Governmental Units and that the Consent Leases may be subject to various permits, authorizations, certifications, or other regulatory filing and approval requirements; and
- r. it is received prior to the Bid Deadline.

15. The Debtors shall have the discretion to determine whether a Bid meets the above requirements and is therefore a Qualified Bid. Upon determining that a Bid constitutes a Qualified Bid, the Debtors shall notify the Stalking Horse Purchaser (if any), and the Consultation Parties, in writing of the fact that the Debtors have made such determination (and shall send a copy of such Qualified Bid to the Consultation Parties), and will notify each Potential Bidder that has submitted a Bid (other than the Stalking Horse Purchaser), whether such Potential Bidder’s Bid constitutes a Qualified Bid promptly after such determination has been made; *provided, however*, that such

⁴ The Debtors may approve joint Bids in their reasonable discretion on a case-by-case basis.

notification shall not be given later than two (2) business days following the expiration of the Bid Deadline. Except as otherwise expressly set forth herein, only those Potential Bidders who have submitted Qualified Bids, as determined by the Debtors, shall be deemed “Qualified Bidders” for purposes of these Bidding Procedures and the Auction.

F. Evaluation of Competing Bids

16. A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such Qualified Bid, (2) the risks and timing associated with consummating such Qualified Bid, (3) any proposed revisions to the Asset Purchase Agreement and/or the Stalking Horse Agreement, (4) the ability of the Qualified Bidder to obtain any applicable regulatory approvals, and (5) any other factors deemed relevant by the Debtors, in consultation with the Consultation Parties. For purposes of such valuation, the full face amount of a credit bid shall be deemed to have the same value as the equivalent amount of cash. The Debtors shall treat comparable credit bids, cash bids, and bids contemplating the assumption of liabilities as equivalent and no credit bid shall be considered inferior to a comparable cash Bid or Bid contemplating the assumption of liabilities because it is a credit bid.

G. No Qualified Bids

17. If the Debtors do not receive any Qualified Bids, other than the Stalking Horse Bid (if any), the Debtors will not hold the Auction and the Stalking Horse Purchaser will be named the Successful Bidder upon the expiration of the Bid Deadline.

H. Auction Process

18. If the Debtors receive one or more Qualified Bids in addition to a Stalking Horse Bid, the Debtors will conduct an auction of the Purchased Assets (the “Auction”), which shall be on **August 31, 2023 at 10:00 a.m. (prevailing Central Time)**, telephonically or by video conference pursuant to instructions to be provided by the Debtors to parties entitled to attend the Auction at a later date, or such other location or time as shall be timely communicated. Prior to the Auction, the Debtors will provide a copy of the Starting Bid (as defined below) to all Qualified Bidders and Consultation Parties entitled to attend the Auction. At the start of the Auction, the Debtors shall describe the material terms of the Starting Bid for the Purchased Assets on the record, which Starting Bid shall be provided to all Qualified Bidders pursuant to subsection (d), below. The Debtors shall maintain a recording or transcript of the Auction and all bids made and announced at the Auction, if any, including the Starting Bid, any and all Subsequent Bids, and the Successful Bid. The Auction, shall be held in accordance with the following procedures:

- a. only the Stalking Horse Purchaser, if any, and any other Qualified Bidders who have timely submitted Qualified Bids (and their counsel) will be entitled to attend and submit competing Bids at the Auction; *provided, however*, the Consultation Parties will be entitled to attend with no obligation to submit a competing Bid;
- b. the Stalking Horse Purchaser will, notwithstanding the elements of the purchase price set forth in the Stalking Horse Agreement, be entitled to make subsequent

Bids for all or substantially all or any combination of the Purchased Assets comprised of further credit bids, cash, additional or different consideration of any type, or any combination of the foregoing;

- c. each Qualified Bidder participating in the Auction may be required to confirm on the record at the Auction (a) it has not engaged in any collusion with respect to the bidding and the Auction, (b) its Qualified Bid is a *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Back-up Bidder, and (c) the Qualified Bidder agrees to serve as the Back-up Bidder if its Qualified Bid is the next highest or otherwise best Bid after the Successful Bid;
- d. at least one (1) day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction; *provided* that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) day prior to the Auction, the Debtors will provide copies of the Qualified Bid, or combination of Qualified Bids, which the Debtors believe, after consultation with the Consultation Parties, is the highest or otherwise best offer for the Purchased Assets (the "Starting Bid") to all Qualified Bidders;
- e. the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;
- f. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a "Subsequent Bid") providing a net value to the Debtors' estates of at least \$500,000 above the prior Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the Bid (and the value of such Bid) that they believe to be the highest or otherwise best Bid (each, the "Leading Bid");
- g. a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;
- h. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtors shall give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;

- i. the Debtors may accept Bids for all or substantially all of the Purchased Assets; and
- j. the Debtors explicitly reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction (in a manner that is not inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith), including (x) modifying bidding increments as necessary to achieve the highest and best Bids for the Purchased Assets, and (y) determining whether to adjourn the Auction to facilitate separate discussions between any Qualified Bidders, the Debtors, and/or Consultation Parties, as applicable.

I. Selection of Successful Bid

19. Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid submitted at the Auction (including by the Stalking Horse Purchaser) in accordance with the procedures set forth herein and determine, in their reasonable business judgment, which offer is the highest or otherwise best offer (one or more such Bids, collectively the “Successful Bid” and the Qualified Bidder(s) making such Bid(s), collectively, the “Successful Bidder”), and communicate to the Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

20. The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors, in consultation with the Consultation Parties, will be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep its Bid open and irrevocable until the later to occur of thirty (30) days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

21. Within one (1) business day after conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder and the Back-Up Bidder. As soon as practicable after the conclusion of the Auction, the Debtors and Successful Bidder shall complete, execute, and file with the Bankruptcy Court all agreements, pleadings, and other documents necessary to consummate the Successful Bid, subject only to approval by the Bankruptcy Court.

J. Return of Deposits; Stalking Horse Protections

22. All Good Faith Deposits shall be returned to each Qualified Bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder no later than five (5) business days following the conclusion of the Auction.

23. The Stalking Horse Protections payable to any Stalking Horse Purchaser shall be paid not later than three (3) business days after the closing of the transaction with the Successful Bidder for the Purchased Assets bid upon by the Stalking Horse Purchaser from the proceeds of such transaction.

SALE HEARING

24. The Debtors will seek entry of a Sale Order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin on **September [●], 2023 at [●] (prevailing Central Time)**, subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder on the terms and conditions memorialized in the applicable Asset Purchase Agreement and in accordance with the Bidding Procedures Order.

RESERVATION OF RIGHTS

25. The Debtors reserve the right, in their reasonable business judgment to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors and the Qualified Bidders; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require to support that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Subsequent Bid amount.

26. The Debtors, the Committee and the DIP Lender agree that in the event of any dispute regarding the Sale process outlined in these Bidding Procedures: (i) any such party may seek an emergency hearing requesting that the Bankruptcy Court resolve such dispute; and (ii) the other parties shall consent to such request for an emergency hearing.

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