

LUTHERAN SOCIAL SERVICES OF NORTH DAKOTA BIDDING PROCEDURES

A. Introduction and Background

Lutheran Social Services of North Dakota (“LSS”) is the debtor in possession in the chapter 11 case (Case No. 21-30203) filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and pending in the United States Bankruptcy Court for the District of North Dakota (the “Bankruptcy Court”).

LSS is seeking to sell certain of its oil, gas and other mineral interests (collectively, the “Assets”). The sale or sales of the Assets shall be free and clear of all liens, claims, and encumbrances.

By order entered _____, 2021 (the “Sale Procedures Order”), the Bankruptcy Court has authorized LSS to offer the Assets for sale, select a stalking horse purchaser (the “Stalking Horse”) of the Assets, and conduct an auction (the “Auction”) of the Assets, subject to and in accordance with the process described in the procedures described below (the “Bidding Procedures”).

The Auction, as defined below, will be managed by LSS and HYPERAMS, LLC (“HYPERAMS”). A description of the Assets is contained in a Confidential Offering Memorandum (“Offering Memorandum”) prepared by HYPERAMS and is available to parties who sign non-disclosure agreements, as described below.

B. Key Dates

The key dates for this process are as follows:

November 30, 2021	Stalking Horse Bid Deadline
_____, 2021	Bidding Procedures Hearing
December 15, 2021	Qualified bid Submission Deadline
December 16, 2021	Auction
_____, 2021	Sale Approval Hearing
January 31, 2022	Outside Closing Date

C. Due Diligence

To receive the Offering Memorandum, conduct due diligence, and otherwise participate in the sale process, each interested party must deliver to HYPERAMS a signed non-disclosure agreement in the form provided.

D. Qualified Bid and Bid Deadline

1. Any person that wishes to bid at the Auction must no later than 5:00 p.m. (Central) on December 15, 2021, submit via e-mail to Tom Pabst at tpabst@hyperams.com, with a copy to LSS's counsel Fredrikson & Byron, P.A., Attn: Steven R. Kinsella at skinsella@fredlaw.com, and LSS's Chief Restructuring Officer Lighthouse Management Group Inc., Attn: Alex J. Dybsky at adybsky@lighthousemanagement.com, a package (collectively, a "Bid Package") that includes **all** of the following items:

- a. A signed non-disclosure agreement in the form provided by HYPERAMS.
- b. The identity of the party submitting the bid and any other party participating in such bid.
- c. A written acknowledgment that the submitting party agrees to all of the terms set forth in these Bidding Procedures.
- d. Written evidence that the submitting party has obtained authorization and approval from its board of directors (or comparable governing body) with respect to the submission of its bid and acceptance of the terms of sale set forth in these Bidding Procedures, or representation that no such authorization or approval is required.
- e. Financial statements, bank statements, written evidence of a financing commitment, or other evidence, satisfactory to LSS, each in their sole discretion, of the financial ability to close under its asset purchase agreement within the deadline described above.
- f. A signed asset purchase agreement in the form of an APA to be prepared by LSS (the "Form APA"), "red-lined" against the Form APA to show all modifications required by the submitting party. Such asset purchase agreement shall be without contingency for financing, further due diligence, or "material adverse change," and shall not contain a break-up fee or expense reimbursement. All modifications must be acceptable to LSS, in consultation with Lighthouse Management Group, Inc., CRO for LSS, and to any secured party if any modifications would result in less than full payment of such party's secured claims. LSS will use its sole discretion and reasonable judgment in valuing such changes and the value of any non-cash consideration to determine the total value of the bid. The asset purchase agreement must also include a list of unexpired leases and executory contracts to be assumed by LSS and assigned to the submitting party. The bid must be irrevocable and on terms at least as favorable to LSS as those set forth in the Form APA.
- g. A deposit ("Deposit") in the amount of [10]% of the purchase price in the form of a cashier's check payable to the order of Lighthouse Management Group Inc., CRO for LSS, which will be returnable as set forth in Section I.

2. LSS, in consultation with its professionals, will analyze each Bid Package based upon the criteria detailed above to determine which bids will qualify the bidders to participate in the auction (each qualifying bid, a “Qualified Bid”), including based on the capability to close a transaction, the bid’s impact on all constituents of LSS, and the amount of the bid. A party who submits a Qualified Bid is a “Qualified Bidder.” For purpose of the Auction, to the extent a Stalking Horse is selected, the Stalking Horse will be a Qualified Bidder. LSS may, at any time, contact bidders to discuss, clarify, or negotiate terms, or to indicate any terms that may need to be modified in order to conform the bid to a Qualified Bid. LSS may extend, at its discretion, the deadline for Qualified Bids, provided that any such extension shall not impair LSS’s ability to close the sale of the Assets on the schedule set forth in the Form APA. LSS shall provide a list of Qualified Bids and each corresponding Bid Package to counsel for the Stalking Horse and counsel for each Qualified Bidder.

E. Selection and Notice of the Stalking Horse

LSS, in consultation with its professionals, may select one of the Qualified Bidders to be the Stalking Horse, in which case the Qualified Bid submitted by the Stalking Horse will be the “Stalking Horse Bid.” The Stalking Horse Bid shall serve as the minimum bid for the Sale Assets at the Auction, and LSS will enter into the transaction contemplated in the Stalking Horse Bid *unless* (a) a higher or better bid is submitted at the Auction with respect to the assets to be purchased through the Stalking Horse Bid, or (b) LSS receives a bid at the Auction that will generate greater value to LSS’s estate overall, and that would be prevented in whole or in part by the transaction contemplated in the Stalking Horse Bid.

If a Stalking Horse is selected, then on or before December 5, 2021, LSS will file a notice identifying the Stalking Horse, and will serve such notice via ECF or e-mail on the Office of the United States Trustee; counsel for the Stalking Horse; and counsel for each Qualified Bidder.

In the event LSS consummates a sale to a party other than the Stalking Horse, LSS may pay to the Stalking Horse out of the sale proceeds a break-up fee of up to [3]% of the purchase price set forth in the Stalking Horse Bid plus reasonable out of pocket expenses (the “Break-Up Fee”). The payment of the Break-Up Fee shall be deemed approved by the Bankruptcy Court pursuant to the Sale Procedures Order, and shall not require any further approval by the Bankruptcy Court.

F. Auction

Qualified Bidders will convene at 9:00 a.m. (Central) on December 16, 2021 via telephonic or video conference as provided by HYPERAMS. The Auction may be postponed by announcement by LSS. LSS may establish and announce rules for the conduct of the Auction and may modify those rules in its discretion. LSS may separately auction any part of the Sale Assets in any order in its sole discretion. Only Qualified Bidders may participate at the Auction. Only representatives of LSS, the United States Trustee, the Stalking Horse (if it chooses to participate in the Auction), and any other Qualified Bidders shall be entitled to attend the Auction.

As to any property included in the Stalking Horse Bid, bidding shall proceed by open auction with the Stalking Horse and all other Qualified Bidders offered the opportunity to increase

their bids over and above the amount of the Stalking Horse Bid. The initial overbid of the Stalking Horse Bid must be at least the amount of the Break-Up Fee. Following the initial overbid, bidding will proceed in increments of at least \$5,000 with future increments at the discretion of HYPERAMS and LSS. The Stalking Horse may credit bid its Break-Up Fee.

If no Stalking Horse is selected, or as to any property not included in the Stalking Horse Bid, bidding shall proceed by open auction, with all Qualified Bidders offered the opportunity to bid. LSS will announce the highest and best of the Qualified Bids received for the relevant property, and bidding will commence based on that bid and will proceed in increments of at least \$5,000 with future increments at the discretion of HYPERAMS and LSS.

When bidding at the Auction has ceased, the bid (or bids, if the assets are separated into lots) deemed by LSS, in consultation with its professionals, to be the highest and best will be announced at the close of the bidding. The highest and best bid is referred to herein as the “Prevailing Bid” and the maker of such bid the “Prevailing Bidder.” The next highest and best bid will be the “Back-Up Bid” and the maker of the bid will be the “Back-Up Bidder.” If the Stalking Horse is not the Prevailing Bidder or the Back-Up Bidder that ultimately becomes the successful buyer and the property is sold to another party, the Break-Up Fee shall be paid under the conditions and as described in the Form APA.

In determining which bid constitutes the Prevailing Bid or Prevailing Bids and the Back-Up Bid or Back-Up Bids, LSS will use its reasonable judgment and may consider, among other things: (i) the purchase price offered in the bid; (ii) the bidder’s financial situation and wherewithal; (iii) the probability of prompt closing; (iv) the ability of such bidder to demonstrate adequate assurance of future performance for all unexpired leases and executory contracts to be assumed; and (v) the best interests of creditors and the estate. LSS may also consider different combinations of bids and may withdraw assets from the bidding to become part of a plan of reorganization.

No additional bids may be submitted or considered after the Auction.

If no Qualified Bids are submitted by the Bid Deadline, LSS may elect, in its reasonable discretion and in consultation with its professionals, to conduct or not conduct an Auction. If only one Qualified Bid is submitted by the Bid Deadline, then LSS may elect, in its reasonable discretion and in consultation with its professionals, to conduct or not conduct an Auction, and may promptly seek Bankruptcy Court approval to enter into and consummate such transaction.

EACH BID – INCLUDING BIDS CONTAINED IN THE BID PACKAGE – SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE PREVAILING BIDDER(S) AND THE BACK-UP BIDDER(S) FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIER OF 48 HOURS AFTER THE SALE OF THE ASSETS HAS CLOSED OR THIRTY (30) DAYS AFTER THE SALE APPROVAL HEARING, SUBJECT TO EXTENSION CONSISTENT WITH THE FORM APA.

G. Sale Approval Hearing

On _____ at _____ a.m./p.m. the Bankruptcy Court will hold a hearing (the “Sale Approval Hearing”) at which LSS will seek Bankruptcy Court approval of the Prevailing Bid(s) and of the Back-Up Bid(s). In the event that a Prevailing Bidder(s) cannot or refuses to consummate the sale, LSS will be permitted to close with the Back-Up Bidder(s) on the Back-Up Bid(s) without further order of the Bankruptcy Court. LSS’s presentation to the Bankruptcy Court for approval of those particular bids does not constitute acceptance of any bids. LSS has accepted a bid only when the Bankruptcy Court, following the Sale Approval Hearing, has approved the sale.

H. Closing

The closing (the “Closing”) shall occur promptly after the Bankruptcy Court has approved the sale, subject to the right of LSS and the Prevailing Bidder, or the Back-Up Bidder as the case may be, to extend such date consistent with the applicable APA, but in no event later than January 31, 2022.

I. Deposits

Each Deposit submitted by a Qualified Bidder other than the Prevailing Bidder(s) or Back-Up Bidder(s) will be returned promptly after the selection of the Prevailing Bidder(s) and the Back-Up Bidder(s). The Deposit submitted by the Back-Up Bidder(s) will be returned forty-eight (48) hours after closing of the sale of the assets to the Prevailing Bidder(s). Each Deposit submitted by a person who is determined not to be a Qualified Bidder will be returned promptly after such determination.

Notwithstanding anything to the contrary in any agreement between a Qualified Bidder and LSS or any other entity, if such Qualified Bidder fails to consummate a transaction approved pursuant to the Sale Order because of a breach or failure to perform on the part of such Qualified Bidder, such Qualified Bidder shall not be entitled to the return of its Deposit, such Deposit shall be deemed property of LSS’s estate, and such Deposit shall be retained by LSS’s estate in partial satisfaction of any damages due to Debtor’s estate as a result of such Qualified Bidder’s failure to consummate the transaction. LSS and all other parties in interest retain any and all rights to recover damages in excess of the Deposit from such Qualified Bidder.

J. General

These Bidding Procedures are subject to modification from time to time by LSS, as circumstances may warrant. LSS shall promptly notify parties in interest and prospective bidders of any such modifications. No bidder has any rights against LSS, its estate, or its professionals by virtue of any modification of these Bidding Procedures, or by virtue of having or not having its bid accepted by LSS or approved by the Bankruptcy Court.

K. Terms of Sale

The sale of the assets shall be on an “AS IS, WHERE IS, WITH ALL FAULTS” basis and without representation or warranties of any kind, nature or description, except as provided in the APA. All of LSS’s right, title and interest in and to the assets shall be sold free and clear of all liens, encumbrances, claims, interests to the full extent available under Bankruptcy Code section 363, with such liens, encumbrances, claims and interests to attach to the net proceeds of the sale.

L. Reservation of Rights

LSS may: (a) determine, in its business judgment and based on the criteria outlined herein, which bids are the highest and best bids for the Sale Assets and in the best interests of LSS’s estate; and (b) except as to the Stalking Horse Bid, reject at any time before entry of an order by the Bankruptcy Court approving a Prevailing Bid (or Back-Up Bid), any bid that, in LSS’s discretion, is (i) inadequate or insufficient based on the criteria outlined herein, (ii) not in conformity with these procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of LSS’s estate; and (c) modify these procedures as set forth herein as required to best accomplish the sale or reorganization. In taking such actions, LSS may consult with its professional or secured creditors.