

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

In re:)	
)	Chapter 11
)	
VERTEX ENERGY, INC., <i>et al.</i> , ¹)	Case No. 24-90507 (CML)
)	
Debtors.)	(Jointly Administered)
)	

**BIDDING PROCEDURES FOR
THE SUBMISSION, RECEIPT, AND ANALYSIS OF BIDS IN
CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS**

Overview

On September 24, 2024, Vertex Energy, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.²

The Debtors filed these chapter 11 cases after entering into a restructuring support agreement (the “Restructuring Support Agreement”) with the support of a majority of the Debtors’ term loan lenders (in their capacity as such, the “Prepetition Term Loan Lenders”) whose claims represent 100% of the claims arising on account of obligations under the Loan and Security Agreement (the claims thereunder, the “Term Loan Claims”). The Restructuring Support Agreement contemplates two paths to a value-maximizing transaction: (a) a standalone recapitalization of the Debtors’ balance sheet (the “Recapitalization Transaction”) and (b) the Sale Transaction (as defined herein).

On September 25, 2024, the Bankruptcy Court entered an order [Docket No. 55] (the “Bidding Procedures Order”), which, among other things, approved these procedures (the “Bidding Procedures”) for the consideration of the highest or best offer for a sale or disposition of the Debtors’ assets (the “Assets”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the “Auction”), if held, for the

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan, the Bidding Procedures Order, or the Bidding Procedures Motion, as applicable.

sale or disposition (each, a “Sale”) of all or substantially all of Debtors’ assets or any portion thereof (collectively, the “Assets”) through one or more transactions (each, a “Sale Transaction”).

These Bidding Procedures describe, among other things: (i) the procedures for Potential Bidders to submit Indications of Interest for one or more Assets; (ii) the manner in which Potential Bidders and Indications of Interest become Acceptable Bidders and Acceptable Indications of Interest; (iii) the manner in which Acceptable Bidders and bids become Qualified Bidders and Qualified Bids; (iv) the negotiation of bids received; (v) the conduct of one or more Auctions; and (vi) the ultimate selection of the Successful Bidder(s) and Court approval thereof (collectively, the “Bidding and Auction Process”).

The Debtors reserve the right to extend any of the bidding deadlines or other dates set forth in these Bidding Procedures, after consultation with the Consultation Parties, without further order of the Bankruptcy Court subject to providing notice as described below; *provided* that such extensions shall not be inconsistent with the milestones set forth in the DIP Orders (unless otherwise consented to by the DIP Lenders in writing).

Reservation of Rights

The Debtors shall have the right, in their reasonable discretion and subject to the exercise of their business judgment, after consultation with the Consultation Parties, to modify or terminate these Bidding Procedures, to waive terms and conditions set forth herein with respect to all Potential Bidders, accelerate or extend the dates and deadlines set forth herein, announce at any Auction modified or additional procedures for conducting the Auction, alter the assumptions set forth herein, provide reasonable accommodations to any Potential Bidder with respect to such terms, conditions, and deadlines of the Bidding and Auction Process to promote bids (including, without limitation, extending deadlines as may be required to comply with any additional filing and review procedures with the applicable regulators in connection with any law or regulation) and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with the objectives of these Bidding Procedures and/or the Bidding Procedures Order; *provided* that the Debtors may not modify the consultation or consent rights provided to the Required Lenders (as defined in the DIP Order) in the Bidding Procedures without the written consent of the Required Lenders.

Fiduciary Out

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, related to any Sale Transaction or with respect to these Bidding Procedures to the extent such Debtor, board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Summary of Important Dates

Deadline	Date
Indication of Interest Deadline	October 23, 2024 at 12:00 p.m., prevailing Central Time

In the Event there are No Acceptable Bidders and the Credit Bid Sale is Pursued

Deadline	Date
Credit Bid Sale Objection Deadline and Adequate Assurance Objection Deadline	November 11, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Credit Bid Sale	November 18, 2024 at 10:00 a.m., prevailing Central Time

In the Event there is at Least One Acceptable Bidder

Deadline	Date
Qualified Bid Deadline	November 22, 2024 at 4:00 p.m., prevailing Central Time
Auction (if any)	November 25, 2024
Successful Bidder Sale Objection Deadline and Adequate Assurance Objection Deadline	December 9, 2024 at 4:00 p.m., prevailing Central Time
Hearing Approving Sale Transaction	December 16, 2024 at 10:00 a.m., prevailing Central Time

Marketing Process

I. Assets to be Sold

The Debtors are seeking to sell all or substantially all of their Assets or any portion thereof, which include, but are not limited to, their owned real property, unexpired leases, executory contracts, cash, equipment, supplies, intellectual property, joint venture interest, insurance proceeds, receivables, prepaid expenses and deposits, and books and records, in each case, free and clear of all liens, claims, interests, or other encumbrances.

II. Potential Bidder Requirements

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence information with respect to the Assets and be eligible to submit an Indication of Interest, a party must submit, or have previously submitted, to the Debtors or their advisors, the following documentation:

- (A) an executed confidentiality agreement (a “Confidentiality Agreement”) in form and substance satisfactory to the Debtors;
- (B) a statement and other factual support demonstrating, to the Debtors’ satisfaction that the interested party has a bona fide interest in purchasing all or a portion of the Assets;
- (C) a statement of what Assets the Potential Bidder intends to acquire;
- (D) a description of the nature and extent of any due diligence the interested party wishes to conduct and the date in advance of the Qualified Bid Deadline by which such due diligence can be completed; and
- (E) sufficient information, as reasonably determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to reasonably determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a Sale Transaction, including, but not limited to, current audited financial statements of the interested party, fully committed debt or equity financing, or such other form of financial disclosure reasonably acceptable to the Debtors in their reasonable discretion.

An interested party shall be a “Potential Bidder” if the Debtors determine in their reasonable discretion that an interested party has satisfied the above requirements. As soon as practicable, the Debtors will deliver to such Potential Bidder (i) an information package containing information and financial data with respect to the Assets in which such Potential Bidder has expressed an interest and (ii) access to the Debtors’ confidential electronic data room (the “Data Room”). For the avoidance of doubt, any party that has executed a Confidentiality Agreement and submitted a non-binding indication of interest prior to the Petition Date, and, in the reasonable judgment of the Debtors, has provided adequate forms of the preliminary documentation requested above, shall be authorized to conduct due diligence and submit a Proposal.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate a Sale Transaction.

No Potential Bidder may, without the prior written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld), enter into any agreement, arrangement or understanding with any person (or make any offers or have any discussions which might lead to such agreement, arrangement or understanding) with respect to jointly participating in a potential Sale Transaction. No Potential Bidder shall, without the prior written consent of the

Debtors (email being sufficient and such consent not to be unreasonably withheld), communicate with or share the Debtors' confidential information with any potential bidding partners or financing sources, or enter into any agreement, arrangement or understanding (or have any discussions which might lead to such agreement, arrangement or understanding), whether written or oral, with any actual or potential bidding partners or financing sources that could reasonably be expected to limit, restrict, restrain, or otherwise impair in any manner, directly or indirectly, the ability of such partners or financing sources to bid for the Debtors' assets or provide financing or other assistance to any other person in any other possible transaction involving the Debtors.

III. Due Diligence

Until the Qualified Bid Deadline, the Debtors will provide any Potential Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Potential Bidders.

Any party interested in submitting a Bid (as defined herein) on any of the Assets should contact the Debtors' investment banker, Perella Weinberg Partners LP and TPH & Co., the energy business of Perella Weinberg Partners (Attn: Doug McGovern (dmcovern@pwppartners.com)); TPH & Co. (Attn: Robert Wheeler (rwheeler@tphco.com)).

Unless otherwise determined by the Debtors in their reasonable discretion and after consultation with the Consultation Parties, the availability of additional due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) the Marketing Process is terminated.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors or the Assets (i) to any person or entity who (a) is not a Potential Bidder or a Consultation Party, (b) who does not comply with the participation requirements set forth above, or (c) in the case of competitively sensitive information, is a competitor of the Debtors (except pursuant to "clean team" or other information sharing procedures reasonably satisfactory to the Debtors); *provided* that the Debtors shall give notice to the Consultation Parties of any person that they have designated as a competitor of the Debtors and restricted access to information as a result or (ii) to the extent not permitted by law.

Without the written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld), no Potential Bidder shall, directly or indirectly, initiate, solicit or maintain contact or otherwise engage in any communication with any director, officer, current or former employee of the Debtors or their affiliates, equityholders, affiliates, creditors, suppliers, distributors, vendors, customers, providers, agents, regulators, landlords or other commercial counterparty of the Debtors regarding the Debtors or their business, financial condition, operations, strategy, prospects, assets or liabilities or concerning any confidential information of the Debtors or any potential Sale Transaction or other transaction involving the Debtors.

IV. Indication of Interest Deadline and Acceptable Bidder Requirements

By no later than **October 23, 2024 at 12:00 p.m.**, prevailing Central Time (the "Indication of Interest Deadline"), Potential Bidders must deliver (unless previously delivered) to each of the

Notice Parties a non-binding written indication of interest (an “Indication of Interest”) containing the material terms of the Potential Bidder’s non-binding proposal, including, but not limited to:

- (A) the identity of the Potential Bidder (including legal name, jurisdiction and form of organization, ownership and capital structure, beneficial owners, ultimate beneficial owners, controlling entities, and the principals and corporate officers) and other authorized representatives authorized to act, with respect to the contemplated transaction, on behalf of the Potential Bidder;
- (B) the Assets of interest proposed to be acquired by the Potential Bidder;
- (C) the transaction structure contemplated by the Potential Bidder, whether a company acquisition or business combination, acquisition or assets, financing transaction, or some combination of the foregoing;
- (D) the proposed purchase price in U.S. Dollars (including cash and non-cash components, if any);
- (E) a statement specifying the Potential Bidder’s intentions with respect to the Debtors’ executory contracts and unexpired leases;
- (F) a statement specifying the Potential Bidder’s intentions with respect to the Debtors’ existing management and employees;
- (G) a statement specifying any key assumptions and any variables to which the Potential Bidder’s valuation is sensitive, as well as any other information the Potential Bidder believes will assist in evaluation of the Indication of Interest;
- (H) a brief assessment of the Potential Bidder’s rationale for the Indication of Interest and the Potential Bidder’s intentions with respect to the Assets. The Proposal should also highlight any former involvement in similar sectors to the Debtors and any other support/relevant facts that support the basis for the Indication of Interest;
- (I) a statement regarding the level of review and, if necessary, approval that the Indication of Interest has received within the Potential Bidder’s organization. The Proposal should also provide a list of any corporate, shareholder, regulatory, or other approvals required to complete the Sale Transaction and the timing to obtain such approvals as well as any other conditions or impediments to the consummation of the Sale Transaction;
- (J) a detailed description of the intended sources of any financing required for the proposed Sale Transaction, as well as an indication of the timing and steps, if any, required to secure such financing, or a statement that the Potential Bidder has available all of the funds necessary to perform all obligations regarding the proposed Sale Transaction;

- (K) a detailed list of due diligence topics, documents required to be reviewed, and other material diligence items, as well as timing in order to finalize a definitive written agreement; and
- (L) a list of the names, and respective functions, of the Potential Bidder's due diligence team and any legal, financial, and other advisors the Potential Bidder has engaged or would plan to engage in connection with the Sale Transaction, including their contact information, and the names, phone numbers, and email addresses of the individuals prepared to answer any questions regarding the Proposal.

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all Indications of Interest to the Consultation Parties. Within two (2) business days after a Potential Bidder delivers the Indication of Interest (unless such time period is extended with the consent of the Required Lenders), the Debtors in their reasonable business judgment will determine, in consultation with the Consultation Parties whether such Potential Bidder has submitted an acceptable Indication of Interest that is an actionable proposal capable of being timely consummated in accordance with the RSA and in the Debtors' reasonable business judgment (any such Potential Bidder, an "Acceptable Bidder", and such bid an "Acceptable Indication of Interest") and will notify each Potential Bidder as to whether their Indication of Interest constitutes an Acceptable Indication of Interest.

If the Debtors receive an Indication of Interest prior to the Indication of Interest Deadline that does not satisfy the requirements of an Acceptable Indication of Interest, the Debtors may provide the Potential Bidder with the opportunity to remedy any deficiencies prior to the Indication of Interest Deadline.

As soon as reasonably practicable upon the passing of the Indication of Interest Deadline, the Debtors shall, in consultation with the Consultation Parties and with the consent of the Required Lenders, file and serve a notice indicating (i) whether the Debtors have received at least one Acceptable Indication of Interest, and (ii) if the Debtors did not receive any Acceptable Indications of Interest, whether the Debtors (a) are terminating the Marketing Process and canceling the Successful Bidder Sale Hearing, and (b) intend to "toggle" from a Recapitalization Transaction to a Sale Transaction pursuant to a Credit Bid for all or a portion of the DIP Claims and/or Term Loan Claims (the "Credit Bid Sale") in accordance with the dates set forth herein.

The Debtors may, after consultation with the Consultation Parties, amend or waive any one or more of the conditions precedent to being an Acceptable Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law.

V. Right to Credit Bid

Unless the Bankruptcy Court determines otherwise, any Potential Bidder who has a valid, perfected, and unavoidable lien on any of the Debtors' Assets (a "Secured Creditor") shall have the right to credit bid all or a portion of their secured claims for their respective collateral pursuant to section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); *provided* that, for the avoidance of doubt, a Secured Creditor shall have the right to Credit Bid its claim only with respect to the collateral by which such Secured Creditor is secured. The Debtors shall evaluate any such

Credit Bid and may deem such Credit Bid as a Qualified Bid (without any requirement that such Credit Bid comply with Section IV hereof, and without having to submit an Indication of Interest) in their reasonable business judgement in consultation with the Consultation Parties.

Auction Qualification Procedures

VI. Qualified Bid Deadline

An Acceptable Bidder that desires to make a bid shall deliver electronic copies of its bid to the Notice Parties (as defined herein) so as to be received **no later 4:00 p.m. (prevailing Central Time) on November 22, 2024** (the “Qualified Bid Deadline”), *provided* that the Debtors may, after consultation with the Consultation Parties, modify the Qualified Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Acceptable Bidders, without further order of the Bankruptcy Court, subject to providing notice to all Acceptable Bidders, the Consultation Parties, and the U.S. Trustee.

VII. Communications

There must be no communications between and amongst Acceptable Bidders, Qualified Bidders, and/or the Consultation Parties regarding the Debtors, a Sale Transaction, or these Bid Procedures, unless the Debtors have previously authorized such communication in writing (email being sufficient). The Debtors shall have the right, in their reasonable business judgment and after consultation with the Consultation Parties, to disqualify any Acceptable Bidder(s) or Qualified Bidder(s) that have communications between and amongst themselves or with the Consultation Parties unless the Debtors have previously authorized such communication in writing (email being sufficient).

VIII. Form and Content of Qualified Bids

A “Bid” as used herein is a signed binding document from an Acceptable Bidder received by the Qualified Bid Deadline that identifies the purchaser by its legal name (including any equity holders or other financial backers, if the Acceptable Bidder is an entity formed for the purpose of submitting bids or consummating a Sale Transaction), and any other party that will be participating in connection with the bid or the Sale Transaction, and includes, at a minimum, the following information:

- (A) **Proposed Assets and Assumed Liabilities.** Each Bid must clearly state the following: (a) whether the Acceptable Bidder seeks to purchase some or all of the Assets; and (b) if applicable, the liabilities and obligations to be assumed, including any debt and cure costs to be assumed.
- (B) **Bid Documents.** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include, at a minimum: (a) a draft purchase agreement (the “Purchase Agreement”), the form of which will be provided to any Acceptable Bidder prior to the Qualified Bid Deadline, including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder

proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the Purchase Agreement provided by the Debtors and/or their advisors, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures; (b) a schedule of contracts and leases to be rejected to the extent applicable to the Bid, (c) a statement from the Acceptable Bidder specifying what, if any, other materials, conditions, due diligence, documents, exhibits, schedules, and/or ancillary materials are integral to such Bid or the Debtors' consideration thereof, (d) any other material documents integral to such Bid, and (e) an executed statement from the Acceptable Bidder that (i) it is prepared to enter into the Sale Transaction upon conclusion of the Auction (or, if no Auction is held, the Qualified Bid Deadline), (ii) provides for a fully-committed investment of capital, and (iii) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the "Back-Up Bid")) until the consummation of the Sale Transaction.

- (C) **Unconditional Offer; No Financial Contingency.** A statement that the Bid is formal, binding, and unconditional, is not subject to any due diligence or financing contingency, and is irrevocable until the first business day following the closing of the proposed Sale Transaction, except as otherwise provided in these Bidding Procedures. To the extent that a Bid is not (i) accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand (or other immediately available cash) or (ii) a Credit Bid, each Bid must include committed financing documented to the Debtors' satisfaction, that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's purchase price and other obligations under its Bid.

(D) **Form of Consideration.**

- (i) All-Cash Offer. Unless the Bid includes a Credit Bid (as described below), a statement confirming that the Bid is based on an all-cash offer, and to meet the applicable Minimum Overbid Amount (as defined herein).
- (ii) Credit Bidding. In connection with the sale of all or a portion of the Assets, a person or entity may seek to credit bid all or a portion of their secured claims for their respective collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code; *provided* that the Credit Bid shall include cash consideration sufficient to pay in full all claims for which there are valid, perfected, and unavoidable liens on any Assets included in such Bid that are senior in priority to those of the party seeking to Credit Bid (unless such senior lien holder consents to alternative treatment) and complies with any orders of the Bankruptcy Court approving debtor-in-possession financing or use of cash collateral (collectively, the "DIP Orders"). A Credit Bid shall not require a Deposit (as defined herein), a commitment for financing, or evidence of financial capabilities to consummate the Sale Transaction.

- (E) **Required Approvals.** A statement or evidence (i) that the Acceptable Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable (“HSR Filings”), and any other antitrust law, and pay the fees associated with such filings, (ii) that the Acceptable Bidder has made or will make in a timely manner all necessary filings under any applicable environmental regulatory law, rule, or regulation, and pay the fees associated with such filings, and (iii) of the Acceptable Bidder’s plan and ability to obtain all other governmental and regulatory approvals (or exemptions or waivers thereof) (collectively, the “Regulatory Approvals”) to consummate the Sale Transaction and operate the business and the Assets included in its Bid from and after closing the Sale Transaction (the “Closing”) and the proposed timing for the Acceptable Bidder to undertake the actions required to obtain such Regulatory Approvals. To the extent the Debtors, after consultation with the Consultation Parties, are not satisfied with a Acceptable Bidder’s ability to secure Regulatory Approvals for a Sale Transaction on a timely basis in the context of these chapter 11 cases and the Debtors’ business needs, the Debtors shall have the right, in their reasonable judgment, to disqualify any such Acceptable Bidder(s).
- (F) **No Entitlement to Expense Reimbursement or Other Amounts.** Each Bid must contain (i) an express statement that the Bid does not entitle the Acceptable Bidder to, and the Acceptable Bidder will not seek, any breakup fee, termination fee, expense reimbursement, working fee or similar type of payment or reimbursement and (ii) a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code or the payment of any broker fees or costs related to a Bid or to the Acceptable Bidder’s participation in the Bidding and Auction Process.
- (G) **Adequate Assurance Information.** Each Bid must contain such financial and other information that allows the Debtors to make a reasonable determination as to the Acceptable Bidder’s financial and other capabilities to consummate the applicable Sale Transaction, including, without limitation, such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, and the Acceptable Bidder’s ability to perform under any contracts that are assumed and assigned to the Acceptable Bidder (the “Adequate Assurance Information”). Adequate Assurance Information may, but shall not be required to, include (i) a corporate organizational chart or similar disclosure identifying ownership and control of the proposed assignee of the applicable contracts and leases; (ii) financial statements, tax returns, and annual reports; (iii) any financial projections, calculations, and/or financial pro-formas prepared in contemplation of purchasing the applicable Assets; (iv) the proposed assignee’s experience in the oil & gas industry and operating a refinery; and (v) a contact person for the proposed assignee.
- (H) **Designation of Contracts and Leases.** Each Bid must identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to Closing.

- (I) **Representations and Warranties.** Each Bid must include the following representations and warranties:
- (i) a statement that the Acceptable Bidder has had an opportunity to conduct any and all due diligence regarding the applicable Assets and Sale Transaction prior to submitting its Bid;
 - (ii) a statement that the Acceptable Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets and Sale Transaction or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Acceptable Bidder's proposed Purchase Agreement ultimately accepted and executed by the Debtors;
 - (iii) a statement that the Acceptable Bidder agrees to serve as Back-Up Bidder (as defined herein), if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets, until the Back-Up Bid Termination Date (as defined herein) or as otherwise agreed to by the Debtors after consultation with the Consultation Parties;
 - (iv) a statement that the Acceptable Bidder has not engaged in any collusion and acted in good faith with respect to the submission of its Bid;
 - (v) a statement that all proof of financial ability to consummate a Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
 - (vi) a statement that the Acceptable Bidder agrees to be bound by the terms of these Bidding Procedures.
- (J) **Good Faith Deposit.** Each Bid (other than any Credit Bid) must be accompanied with a cash deposit in the amount equal to ten percent (10%) of the aggregate purchase price of the Bid, to be held in an escrow account to be identified and established by the Debtors (the "Good Faith Deposit"). To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals ten percent of the increased aggregate purchase price promptly and in no event later than one (1) business day following the conclusion of the Auction.
- (K) **Contact Information.** Each Bid must be accompanied by the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Acceptable Bidder.

- (L) **Commitment for Financing.** Each Bid must be accompanied with written evidence of available cash, a commitment for financing (not subject to any conditions), and such other evidence of ability to consummate the transaction contemplated by the Purchase Agreement, if applicable, which must be acceptable to the Debtors in their reasonable business judgment, including a description of each investor and any additional party or parties investing in the transaction included in the applicable bid and such party's financial position.
- (M) **Authorization.** Each Bid must be accompanied with a copy of a board resolution or similar document demonstrating the authority of the Acceptable Bidder to make a binding and irrevocable bid on the terms proposed and to consummate the Sale Transaction.
- (N) **Covenant to Cooperate.** Each Bid must be accompanied with a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Acceptable Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws, and other applicable regulatory requirements.
- (O) **Detailed Bid.** Each such Bid must be accompanied with a detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value.

The submission of a Bid by the Qualified Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.

IX. Review of Bids and Designation of Qualified Bidders

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all Bids to the Consultation Parties, including any sealed bids. In advance of the commencement of the Auction, as soon as is reasonably practicable, the Debtors, after consultation with the Consultation Parties, shall determine in their reasonable business judgment which Acceptable Bidders are Qualified Bidders (and such Bids, "Qualified Bids"), and will notify the Acceptable Bidders of whether their respective Bid submitted constitutes a Qualified Bid, which will enable such Qualified Bidder to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Qualified Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction; *provided, further*, that the Debtors may, in consultation with the Consultation Parties, determine that any Potential Bidder that has not submitted an Indication of Interest but has submitted a binding irrevocable Bid that satisfies the requirements of a Qualified Bid is a Qualified Bidder, and such Bid is a Qualified Bid, despite not being deemed an Acceptable Bidder.

The Debtors may, after consultation with the Consultation Parties, amend or waive any one or more of the conditions precedent to being a Qualified Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and may engage in negotiations with Acceptable Bidders who submitted Bids complying with the preceding

section as the Debtors deem appropriate in the reasonable exercise of their business judgment, based upon the Debtors' evaluation of the content of each Bid.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the Assets, as applicable, except to the extent expressly provided in the Bankruptcy Court's sale order (which may be the Confirmation Order) (the "Sale Order"). Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Sale Order.

The Debtors reserve the right to work with any Bidder in advance of the Auctions to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. The Debtors may, after consultation with the Consultation Parties, accept a single Bid or multiple Bids for non-overlapping Assets such that, if taken together, would otherwise meet the standards for a single Qualified Bid. If a Bid is received and, in the Debtors' reasonable judgment, after consultation with the Consultation Parties, it is not clear whether the Bid is a Qualified Bid, the Debtors may consult with the Acceptable Bidder and seek additional information in an effort to establish whether or not the Bid is a Qualified Bid, or to cause such Bid to be a Qualified Bid.

X. Failure to Receive a Qualified Bid

If no Qualified Bids for the Assets are received by the Qualified Bid Deadline, the Debtors, in consultation with the Consultation Parties and with the written consent of the Required Lenders, may (i) terminate the Marketing Process, (ii) file and serve a notice indicating that no Qualified Bids were received prior to the Qualified Bid Deadline, and (iii) shall seek approval of other alternatives with respect to the disposition of the Assets, including the Recapitalization Transaction or a Credit Bid Sale.

XI. Auction

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for any particular Asset or portion of the Assets by the Qualified Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment with respect to such Asset or portion of the Assets. If the Debtors do not receive any Qualified Bids, or receive only one Qualified Bid, the Debtors will not conduct the Auction; *provided, however*, that the Debtors, in consultation with the Consultation Parties, may conduct an Auction in the event any Secured Creditor submits a Credit Bid.

Prior to commencement of the Auction, after consultation with the Consultation Parties, the Debtors shall make a determination regarding the highest or best Qualified Bid (or collection of Qualified Bids) (each, a “Baseline Bid,” and such bidder or group of bidders, a “Baseline Bidder”) to serve as the starting point at the Auction for such Assets. As soon as practicable, but no later than the commencement of the Auction, the Debtors will provide copies of each Baseline Bid to the Consultation Parties and the Qualified Bidders participating in the Auction.

Between the date the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld), a Qualified Bidder may not modify, amend or withdraw its Qualified Bid, except for proposed amendments to increase the purchase price or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; *provided* that any Qualified Bid may be improved at the Auction as set forth herein.

The Debtors are under no obligation to (i) select any Baseline Bid or (ii) conduct separate Auctions for any Assets, whether before or after selecting a Baseline Bid. Notwithstanding anything to the contrary contained herein, the Debtors may elect, in their reasonable discretion, and after consultation with the Consultation Parties, to adjourn the Auction.

XII. Auction Procedures

The Auction shall be conducted on **November 25, 2024** at (i) the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (ii) virtually, pursuant to procedures to be announced to bidders, or (iii) such other time and place as the Debtors, after consultation with the Consultation Parties, may notify Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith, after consultation with the Consultation Parties. Professionals and/or other representatives of the Consultation Parties, and the U.S. Trustee will be permitted to attend and observe the Auction.

At the Auction, Qualified Bidders will be permitted to increase their bids. For each Baseline Bid, bidding will start at the purchase price and terms proposed in the applicable Baseline Bid, and will proceed thereafter in increments to be determined by the Debtors and announced (a “Minimum Overbid Amount”) after consultation with the Consultation Parties. The Debtors reserve the right to and may, after consultation with the Consultation Parties, increase or decrease the Minimum Overbid Amount at any time during the applicable Auction for any assets.

The Debtors may adopt rules, after consultation with the Consultation Parties, for an Auction at any time that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding and Auction Process. At the start of an Auction, the Debtors shall describe the terms of the applicable Baseline Bid. Any rules developed by the Debtors will provide that all bids in the Auction will be made and received in one room (in person or virtually), on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder will be fully disclosed to all other Qualified Bidders participating in the Auction and that all material terms of

each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other Qualified Bidders throughout the entire Auction. Each Qualified Bidder will be permitted an appropriate amount of time, as reasonably determined by the Debtors in consultation with the Consultation Parties, to respond to the previous bid at the Auction.

The Debtors reserve the right to and may, after consultation with the Consultation Parties, reject at any time before entry of the relevant Sale Order any bid that, in the Debtors' reasonable judgment, is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates. In doing so, the Debtors may take into account the factors set forth above regarding the form and content of Qualified Bids and the Debtors' review of bids.

Prior to the conclusion of an Auction, the Debtors, after consultation with the Consultation Parties, will (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating a Sale Transaction; (ii) determine the highest or best offer or collection of offers for an Asset (as applicable to each Asset, a "Successful Bid"); (iii) determine which Qualified Bid is the next highest or best bid for such Asset (as applicable to each Asset, the "Back-Up Bid"); and (iv) notify all Qualified Bidders participating in an Auction, prior to its conclusion, the successful bidder for such Assets (the "Successful Bidder"), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Back-Up Bid for such Assets (the "Back-Up Bidder").

Each Qualified Bidder shall be required to confirm, both before and after the Auction, that it has not engaged in any collusion with respect to the submission of any bid, the bidding, or the Auction.

XIII. Post-Auction Process

A Successful Bidder shall, within one (1) business day after the close of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid, which shall be in form and substance acceptable to the Debtors, after consultation with the Consultation Parties. Promptly following the submission of such documentation, the Debtors shall file with the Bankruptcy Court notice of the Successful Bid, the Successful Bidder, and, if applicable, the Back-Up Bid and the Back-Up Bidder. The Successful Bid may not be assigned to any party without the written consent of the Debtors (email being sufficient and such consent not to be unreasonably withheld) after consultation with the Consultation Parties.

Except as otherwise agreed to by the Debtors after consultation with the Consultation Parties, the Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) the consummation of the transaction with the Successful Bidder and (ii) the release of such bid by the Debtors (such date, the "Back-Up Bid Termination Date"). If the transaction with a Successful Bidder is terminated prior to the Back-Up Bid Termination Date, the Back-Up Bidder shall be deemed the Successful Bidder and shall be obligated to consummate the Back-Up Bid as if it were the Successful Bid.

XIV. Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases in connection with the Assumption and Assignment Procedures set forth in the Order.

XV. Free and Clear of Any and All Encumbrances

Except as otherwise provided for in a Purchase Agreement, all right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all liens, claims, rights, interests, charges, and encumbrances (collectively, the “Encumbrances”), subject only to the Assumed Liabilities (as defined in a Purchase Agreement), if any, in accordance with Bankruptcy Code section 363(f), with such Encumbrances to attach to the net proceeds (if any) received by the Debtors from the Sale of the Assets in accordance with the Bankruptcy Code, applicable non-bankruptcy law, and any prior orders of the Bankruptcy Court.

XVI. Sale Objections and Sale Hearings

Objections to a proposed Sale Transaction (the “Sale Objections”), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and/or entry of a Sale Order, if applicable, must be (i) filed in accordance with the Bidding Procedures Order (except to the extent set forth by the Debtors in a separate motion seeking approval of a proposed Sale Transaction), (ii) filed with the Bankruptcy Court, and (iii) served on the Notice Parties by no later than the following deadlines (except to the extent set forth by the Debtors in a separate motion seeking approval of a proposed Sale Transaction):

- (i) In the event there are no Acceptable Indications of Interest and the Debtors toggle to pursuing the Credit Bid Sale, **November 11, 2024 at 4:00 p.m.**, prevailing Central Time (the “Credit Bid Sale Objection Deadline”); or
- (ii) In the event there is a Successful Bidder, **December 9, 2024 at 4:00 p.m.**, prevailing Central Time (the “Successful Bidder Sale Objection Deadline” and together with the Credit Bid Sale Objection Deadline, the “Sale Objection Deadlines”).

The Debtors may extend the Sale Objection Deadlines, as the Debtors deem appropriate in the exercise of their reasonable business judgment and after consultation with the Consultation Parties and upon notice to each Successful Bidder(s). If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Bankruptcy Court at the applicable Sale Hearing.

Any party who fails to timely file with the Bankruptcy Court a Sale Objection will be forever barred from asserting any objection to the applicable sale, or to the consummation and performance of a sale transaction contemplated by a purchase agreement between the Debtors and a Successful Bidder, including the transfer of the Debtors’ business to a Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code. Any

objection filed after the applicable Sale Objection Deadline (except to the extent set forth by the Debtors in a separate motion seeking approval of a proposed Sale Transaction) will not be considered by the Bankruptcy Court.

Unless the Debtors file and serve a revised notice, hearings (each, a “Sale Hearing”) to approve the Sale Transaction(s) shall be held on (subject to Court availability):

- (i) In the event there are no Acceptable Bidders and the Credit Bid Sale is pursued, **November 18, 2024 at 10:00 a.m.**, prevailing Central Time (the “Credit Bid Sale Hearing”); or
- (ii) In the event there is a Successful Bidder, **December 16, 2024 at 10:00 a.m.**, prevailing Central Time (the “Successful Bidder Sale Hearing”).

The Sale Hearing, as applicable, will be before the Honorable Christopher M. Lopez, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of Texas at Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. A Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors after consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing(s).

An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a 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 executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction.

Treatment and Return of Deposits

XVII. Potential Bidders

Within five (5) business days after the Qualified Bid Deadline, the Escrow Agent shall return to each Acceptable Bidder that was determined not to be a Qualified Bidder, as confirmed by the Debtors, such Acceptable Bidder’s Deposit, plus any interest accrued thereon. Upon the authorized return of such Acceptable Bidder’s Deposit, the bid of such Acceptable Bidder shall be deemed revoked and no longer enforceable.

XVIII. Qualified Bidders

Without limiting the terms of any definitive termination agreement with any Qualified Bidder, the Deposit of a Qualified Bidder will be forfeited to the Debtors if (i) the applicable Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures, or (ii) the Qualified Bidder is selected as the Successful Bidder and fails to enter into the required definitive documentation or to consummate the transaction in accordance with these Bidding Procedures and the terms of the applicable transaction documents with respect to the Successful Bid. The Escrow Agent shall release the Deposit by wire transfer of immediately available funds to an account designated by the Debtors two (2) business days after

the receipt by the Escrow Agent of a written notice by an authorized officer of the Debtors stating that the Qualified Bidder has breached or failed to satisfy its obligations or undertakings.

With the exception of the Deposit of a Successful Bidder and a Back-Up Bidder, the Escrow Agent shall return to any other Qualified Bidder any Deposit, plus any interest accrued thereon, five (5) business days after the execution by the Successful Bidder and the Debtors of the documentation memorializing the Successful Bid, but in no event later than ten (10) business days after the conclusion of the applicable Sale Hearing.

XIX. Back-Up Bidder

The Escrow Agent shall return a Back-Up Bidder's Deposit, plus any interest accrued thereon, within ten (10) business days after the occurrence of the applicable Back-Up Bid Termination Date.

XX. The Successful Bidder

The Deposit of a Successful Bidder shall be applied against the cash portion of the purchase price of such Successful Bidder upon the consummation of the transaction proposed in the applicable Successful Bid.

XXI. Notice to Escrow Agent

The Debtors and, as applicable, an Acceptable Bidder, Qualified Bidder, and/or Back-Up Bidder agree to execute an appropriate notice to the Escrow Agent for the return of any Deposit to the extent such return is required by these Bidding Procedures. If either party fails to execute such written notice, the Deposit may be released by an order of the Bankruptcy Court.

XXII. Notice and Consultation Parties

Information that must be provided to the "Notice Parties" under these Bidding Procedures must be provided to the following parties:

- (i) The Debtors:

Vertex Energy Inc.
1331 Gemini St., Suite 250
Houston, Texas 77058
Attention: James P. Gregory, Secretary & General Counsel

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian Schartz, P.C.
Josephine Fina
Brian Nakhaimousa
E-mail address: bschartz@kirkland.com
josephine.fina@kirkland.com
brian.nakhaimousa@kirkland.com

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: John Luze
Rachael Bentley
E-mail address: john.luze@kirkland.com
rachael.bentley@kirkland.com

(ii) Counsel to the Required Lenders:

Sidley Austin LLP
1999 Avenue of the Stars, 17th Floor
Los Angeles, CA 90067
Attention: Genevieve G. Weiner
Leslie Plaskon
Michele Nudelman
E-mail address: gweiner@sidley.com
lplaskon@sidley.com
mnudelman@sidley.com

(iii) counsel to any official committee of unsecured creditors appointed in the Debtors' chapter 11 cases (the "Committee").

XXIII. **Consultation Parties**

The term "Consultation Parties" as used in these Bidding Procedures shall mean (a) the Required Lenders (as defined in the DIP Orders), and (b) any official committee appointed in these chapter 11 cases (the "Committee").

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

In the event that any Consultation Party or any member of the Committee, or an affiliate of any of the foregoing, submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with (or receive consent from) such bidding party established under these Bidding Procedures will be waived, discharged, and released without further action; *provided* that the

bidding party will have the same rights as any other Qualified Bidder set forth above and will retain any rights it has under the DIP Orders. Notwithstanding the foregoing, the Required Lenders may reasonably request to consult with Jeffrey S. Stein, the Debtors' independent and disinterested director, regarding the status of the Marketing Process.

If a member of the Committee submits an Indication of Interest and/or a Qualified Bid, the Committee will continue to be a Consultation Party; *provided* that the Committee shall exclude such member from any discussions or deliberations regarding the sale of the applicable Assets and shall not provide any confidential information regarding the sale of the applicable Assets to such member.

Consent to Jurisdiction and Authority as Condition to Bidding

All Potential Bidders shall be deemed to have (a) consented to the core jurisdiction of the Bankruptcy Court to enter any order or orders, which shall be binding in all respects, in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction, (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction, and (c) consented to the entry of a final order or judgment in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.