

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
CANAL ASPHALT, INC.,	: Case No. 15-23094-rdd
	: :
Debtor.	: :
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**AMENDED ORDER AUTHORIZING AUCTION PROCESS
AND APPROVING BID PROCEDURES FOR THE DISPOSITION
OF THE DEBTOR'S ASPHALT PLANT AND RELATED EQUIPMENT
IN CONJUNCTION WITH THE DEBTOR'S CHAPTER 11 PLAN**

UPON the motion (ECF No. 128) the “Motion”) of Canal Asphalt, Inc., the debtor and debtor in possession herein (the “Debtor” or “Canal”), by its counsel, Goetz Fitzpatrick LLP, authorizing an auction process and approving bid procedures for the disposition of the Debtor’s asphalt plant and real property located at 800 Canal Street, Mount Vernon, New York (the “Canal Plant”), and certain property and other assets related thereto (including but not limited to the Debtor’s Westchester County Certificate to Operate, the Debtor’s City of Mount Vernon Special Use Permit, and all other licenses and permits required to operate the Canal Plant, collectively, the “Purchased Assets” and, together with the Canal Plant, the “Assets”); and an Order having been entered on December 8, 2015 granting the Motion (ECF No. 150, the “Sale Procedures Order”); and the Debtor having filed a Motion to vacate the Sale Procedures Order on January 8, 2016 (ECF No. 165, the “Motion to Vacate”) in light of the Debtor’s execution of an Asset Purchase Agreement with PCI Industries Corp. (“PCI”) dated January 20, 2016 (“PCI APA”); and upon the objections to the Motion to Vacate filed by Petrillo Contracting, Inc. (ECF No. 170) and Peckham Materials Corp. (“Peckham”) (ECF No. 171); and upon the record of the hearing held by the Court on the Motion to Vacate on January 25, 2016 (the “Hearing”); and,

after due deliberation and sufficient cause appearing therefor for the reasons stated by the Court at the Hearing,

THE COURT HEREBY FINDS AND CONCLUDES:

A. That this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157(a)-(b) and 1334(b) and the Standing Order of Referral of Cases to Bankruptcy Judges for the Southern District of New York dated July 10, 1984 (Ward, C.J.), as amended. The Motion to Vacate is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O) that the Court may decide by final order.

B. That venue of this proceeding in this District is proper under 28 U.S.C. §§1408 and 1409.

C. That the Debtor has entered into the PCI APA, which provides for the sale of the Assets to PCI through a Chapter 11 Plan (the “Plan”), subject to confirmation by the Bankruptcy Court, for the purchase price of up to \$13.3 million dollars (“Purchase Price”), and the Debtor believes that such that amount pay all allowed claims against the Debtor in full.

D. That the PCI APA further provides that payment of the Purchase Price thereunder will be made as follows: (a) \$250,000 upon execution of the PCI APA to be held in escrow as a deposit of earnest money (which amount has already been paid and is on deposit in escrow), (b) \$3.1 million dollars (“Cash Payment”) in cash to be paid at the closing of the sale of the Assets, which shall be used by the Debtor pursuant to the Plan to (i) reinstate the secured claims of Peckham and C.L. Consulting & Management Corp., (ii) pay the remaining allowed secured and priority (inclusive of administrative) claims in full, and (iii) the balance of the Cash Payment to make a distribution on the allowed general unsecured claims, (c) pay the allowed secured claim of New Flow LLC over four (4) years with no interest, and (d) the remaining balance of the Purchase Price, to the allowed general unsecured claims over five (5) years with interest at the federal judgment rate.

E. That the PCI APA further provides that in the event that an alternative or “competing” Chapter 11 plan (“Competing Plan”) is confirmed or if the Property is sold at auction at which PCI is not the successful bidder, PCI shall be entitled to payment in the sum of up to \$399,000 (3% of PCI Purchase Price) and an expense reimbursement of actual and verifiable expenses up to \$50,000 (collectively, the “Break-Up Fee”).

F. That, the Court believes that in order to ensure that the Assets are sold for the highest and best price, third parties should be given an opportunity to make competing offers at an auction, subject to the sale procedures and Break-Up Fee as provided and approved below, for implementation under the Plan.

BASED UPON THE FOREGOING FINDINGS, IT IS HEREBY ORDERED:

1. The Sale Procedures Order is hereby modified and superseded by this Order. In the event of any inconsistencies between the Sale Procedures Order and this Order, the terms and provisions of this Order shall govern in all respects.

2. The Debtor is authorized to conduct an auction of the Assets (the “Auction”) concurrently with the Debtor’s request for confirmation of the Plan in accordance with the bidding and auction procedures substantially in the form attached as Exhibit “1” to this Order (the “Auction Procedures”)¹, which are hereby approved and shall govern disposition of the Assets through either the Plan and/or an Auction.

3. The deadline for submitted Qualified Bids (as that term is defined in the Auction Procedures) shall be no less than 20 days prior to the scheduled hearing to consider confirmation of the Plan (“Bidding Deadline”), and all such bids shall be submitted to Debtor’s counsel and its duly retained Auction advisor (the “Advisor”). Debtor’s counsel shall promptly provide copies of such Qualified Bids to counsel for PCI, which shall maintain each such Qualified Bid in the strictest confidence, for use only for the purpose of evaluating whether PCI wishes to increase the Purchase Price under the PCI APA

4. In the event that Qualified Bids are received in accordance with the Auction Procedures, the Debtor, through the Advisor, will conduct an Auction of the Assets commencing no less than 10 days after the Bidding Deadline at the office of Goetz Fitzpatrick LLP, One Penn Plaza, Suite 3100, New York, NY 10119.

5. In the event of an Auction, the Debtor and the Advisor are authorized to select, in their sole discretion, for the Court’s final consideration and approval, the bidder that they believe

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Auction Procedures.

has submitted the highest or otherwise best bid (the “Successful Bidder”) for the Assets (the “Successful Bid”).

6. The Debtor and the Advisor are further authorized to select, in their sole discretion, for the Court’s final consideration and approval, the bidder that they believe has submitted the second-highest or otherwise second-best bid (the “Back-up Bidder”) for the Assets (the “Back-Up Bid”).

7. The Break-Up Fee provided for in the PCI APA is approved, and the PCI APA is hereby deemed a Qualified Minimum Bid, subject in each case only to a determination by the Advisor that PCI satisfies the requirements of a Qualified Bidder in accordance with the Auction Procedures Section 1(d) and, upon such determination, shall be deemed a Qualified Bidder for all purposes without further order of this Court.

8. PCI shall be permitted at the Auction to modify its Qualified Minimum Bid in the event that a competing Qualified Bid is determined by the Debtor and the Advisor to be higher and/or better during the course of the Auction. Such modification may include, (i) an increase in the overall consideration offered in the PCI APA in the event a higher and/or better Qualified Bid is made in the form of a lump sum, all-cash payment in at least the amount of the Minimum Qualified Bid (as defined in the Auction Procedures) or (ii) a lump-sum, all cash Bid that does not include deferred payment terms such as those set forth in the PCI APA, which may be less than the Purchase Price under the PCI APA but nevertheless is evaluated by the Debtor and the Advisor as a superior bid. All other Qualified Bidders shall have the same right. There will be no further bids considered by the Debtor and/or the Advisor subsequent to the close of the Auction unless the Court orders otherwise.

9. Pursuant to section 363(f) of the Bankruptcy Code and subject to this Court's approval at the hearing to consider confirmation of the Plan ("Confirmation Hearing"), the sale agreement executed and delivered by the Debtor in accordance with the Auction Procedures shall constitute a sale free and clear of any interest including, without limitation, any liens, claims or encumbrances upon the Assets.

10. Pursuant to section 363(m) of the Bankruptcy Code and subject to this Court's approval at the Confirmation Hearing, the Successful Bidder and the Back-up Bidder shall be entitled to the protections afforded to good-faith purchasers.

Dated: White Plains, New York
February 9, 2016

/s/Robert D. Drain
HON. ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

NOTICE OF AUCTION

AUCTION AND SALE PROCEDURES

PLEASE TAKE NOTICE THAT pursuant to the Amended Order entered on February ____, 2016 (the “Auction Order”) by the United States Bankruptcy Court for the Southern District of New York in connection with the Chapter 11 case of Canal Asphalt, Inc. (the “Debtor”) styled *In re Canal Asphalt, Inc.*, Chapter 11 Case No. 15-23094-rdd (the “Bankruptcy Case”), the Debtor has entered into an Asset Purchase Agreement (the “PCI APA”) with PCI Industries Corp. (“PCI”) dated January 20, 2016 which provides for a purchase of certain assets of the Debtor including the Debtor’s interest in the Debtor’s asphalt plant and real property located at 800 Canal Street, Mount Vernon, New York (“Canal Plant”) and other related equipment (as set forth on Exhibit “A” hereto), the Debtor’s Westchester County Certificate to Operate, the Debtor’s City of Mount Vernon Special Use Permit, and all other licenses and permits required to operate the Canal Plant (the “Purchased Assets” and, together with the Canal Plant, the “Assets”). The PCI APA contemplates the approval and authorization thereof in connection with and pursuant to the confirmation of the Debtor’s Chapter 11 Plan (the “Plan”).

The Debtor will be filing a plan of liquidation (the “Plan”), which provides an opportunity for the PCI APA transaction to be subject to competitive bidding as set forth in these Auction Procedures. In the event that one or more Bids are received from Qualified Bidders (as defined below), an auction shall be conducted live and in-person, in accordance with these Auction Procedures, by the Debtor’s proposed advisor, SSG Capital Advisors, LLC, (the “Advisor”) on April 21, 2016 at 11:00 a.m. (**Eastern Time**) **at the offices of Goetz Fitzpatrick LLP, One Penn Plaza, 31st Floor, New York, New York 10119.**

1. **Determination of “Qualified Bidder” Status.** Any potential bidder who wishes to participate in the Auction (as hereinafter defined) and to bid to acquire the Assets must be a “Qualified Bidder.” A Qualified Bidder is a potential bidder who, **on or before April 14, 2016 at 10:00 a.m. (Eastern Time)** (the “Qualified Bidder Deadline”), delivers, so as to be actually received by such date and time, to (a) counsel to the Debtor, Goetz Fitzpatrick LLP, One Penn Plaza, 31st Floor, New York, New York 10119, Attn.: Gary M. Kushner, Esq. and (b) the Advisor, SSG Capital Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, Attn: J. Scott Victor, a written submission that includes, in addition to the information contained in the Offer and Bidder Registration Form annexed hereto as Exhibit “B” (together, “Required Bid Documents”):

a. fully discloses the identity of the person or entity that will be bidding for the Assets (the “Bidder”) or otherwise participating in connection with such bid on behalf of the Bidder, and the terms of any such participation;

b. states that the Bidder is financially able and interested in acquiring the Assets for a cash price of not less than the “Minimum Bid” (defined below), without contingencies as to financing and/or additional due diligence (it being

understood, however, that the Bidder, while bound to its bid, shall not be deemed to have made an offer to acquire the Assets binding upon the Debtor prior to the time that the Auction is conducted and the sale approved by the Court);

c. to the extent the Bidder seeks to include a bid for any Other Assets, fully identifies the Other Assets sought as part of the Bid and ascribes a dollar amount for the purchase of such Other Assets;

d. is accompanied by financial information (including, without limitation, audited and unaudited financial statements, tax returns, bank account statements and any other documentation, collectively "Confidential Information") acceptable to the Advisor, which fairly and reasonably demonstrates the Bidder's ability (and the sources of the Bidder's ability) to immediately consummate the transactions contemplated in the Bidder's bid. All Confidential Information shall be delivered only to the Advisor, who shall hold it in confidence and not disclose it to any other person except Debtor's counsel, if the Advisor deems such to be necessary. All Confidential Information shall be returned to the respective Bidder immediately upon the Advisor's determination that such Bidder is either a Qualified Bidder or not;

e. is accompanied by evidence that a deposit in the amount of **\$250,000.00** (a "Deposit") has been made (or is concurrently being made) in the form of (i) a certified check, federal funds, or an official bank check issued by a bank with offices in Westchester County or in the City of New York made payable to Goetz Fitzpatrick LLP, as escrow agent (the "Escrow Agent"), or (ii) a wire transfer to the Escrow Agent in accordance with wire instructions that will be provided on request, which Deposit shall be held in escrow in a non-interest bearing escrow account by the Escrow Agent in accordance with the terms hereof. The foregoing notwithstanding, PCI shall be permitted to maintain its deposit in escrow with its counsel in accordance with the terms of the PCI APA;

f. agrees in writing to close on the purchase of the Assets (and Other Assets, if applicable) if the Qualified Bidder's bid at the Auction is selected as the Successful Bid (as hereinafter defined), immediately after the Auction results are approved by the Bankruptcy Court on a date and time to be determined in the discretion of the Debtor, which shall occur in all events **by no later than five (5) days after the Court approves the sale in connection with the confirmation of the Debtor's Chapter 11 Plan ("Confirmation")**, or on such other date as the Debtor and the Successful Bidder shall otherwise agree to in writing, or as may otherwise be established in accordance with the terms hereof (such date, the "Closing Date"), with **TIME BEING OF THE ESSENCE AS TO THE SUCCESSFUL BIDDER'S OBLIGATION TO CLOSE ON THE CLOSING DATE**;

g. agrees in writing that if such Bidder is determined by the Debtor to have submitted the second-best bid at the Auction (the "Back-up Bid") and, therefore,

to be the back-up bidder (the “Back-up Bidder”), and the Debtor determines to proceed with the Back-up Bid after default by the Successful Bidder, to close on the purchase of the Assets (and Other Assets, if applicable) on a date and time to be determined in the discretion of the Debtor, which shall occur in all events **by no later than five (5) days after Confirmation**, or on such other date as the Debtor and the Back-up Bidder shall otherwise agree to in writing, or as may otherwise be established in accordance with the terms hereof (such date, the “Back-up Closing Date”), with **TIME BEING OF THE ESSENCE AS TO THE BACK-UP BIDDER’S OBLIGATION TO CLOSE ON THE BACK-UP CLOSING DATE;**

h. is accompanied by an executed and fully-completed Asset Purchase Agreement (“APA”) for the purchase of the Assets, which provides for a purchase price no less than the Minimum Qualifying Bid (set forth below), which APA shall be in form substantially in the form of the PCI APA and marked to show any amendments and modifications thereto, the form of which can be obtained from the Debtor’s counsel no later than fifteen (15) days prior to the Auction Date;

i. agrees in writing that if such Bidder (i) is the Successful Bidder, that the Deposit shall become non-refundable if the Bidder’s bid at the Auction is selected as the Successful Bid and shall be forfeited by such Successful Bidder as liquidated damages if the Successful Bidder shall fail to close the purchase for any reason whatsoever on the Closing Date (other than for failure of the Debtor to execute and deliver documents necessary to convey the Assets and Other Assets, if applicable, or such other material default by the Debtor under the contract); and (ii) is the Back-up Bidder and the Debtor determines to proceed with the Back-up Bid after default by the Successful Bidder, that the Deposit shall become non-refundable and shall be forfeited by such Back-up Bidder as liquidated damages if the Back-up Bidder shall fail to close the purchase for any reason whatsoever on the Back-up Closing Date (other than for failure of the Debtor to execute and deliver documents necessary to assign the Assets, or such other material default by the Debtor under the contract); and

j. agrees to these Auction Procedures by signing and delivering an executed original of this document at or prior to the commencement of the Auction to counsel for the Debtor.

2. **Minimum Qualifying Bid.** “Minimum Qualifying Bid” means a bid of *either*: (a) not less than **\$11,100,000. (Eleven Million One Hundred Thousand Dollars and 00/100)** in a lump sum, all-cash payment; or (b) **\$13,849,000 (Thirteen Million Eight Hundred Forty Nine Thousand Dollars and 00/100)** on the same or better payment terms as set forth in the PCI APA, which amount includes sums anticipated to cover the Break-Up Fee and expense reimbursement (subject to Bankruptcy Court approval) due to PCI in the event that it is not the Successful Bidder.

3. **Qualified Bids** Unless such requirement is waived by the Debtor, only Bidders that have submitted Qualified Bids shall be eligible to participate in the Auction. Failure of a Bidder to fully, accurately and promptly respond to the Advisor’s reasonable requests for additional information may result in a Bid no longer being considered a Qualified Bid. Following the receipt of Bids, the Advisor, in conjunction with the Debtor, will ascertain, in the exercise of its reasonable business judgment, whether a Bid is a Qualified Bid, taking into account, among other things, the quality of the Required Bid Documents, the Bidder’s experience, financial capacity to close, reputation in the marketplace, etc. By 11:00 a.m. on April 19, 2016, the Advisor will notify counsel for the Debtor, PCI and Peckham, and each Bidder at the email address set forth on the Offer & Bidder Registration Form if it is a Qualified Bidder. In order for a Bid to be a “Qualified Bid,” a Bid shall:

- a. Include the Deposit and each of the Required Bid Documents, executed and in form and substance acceptable to the Debtor;
- b. Be a good faith, bona fide, offer to purchase the Assets;
- c. Not be contingent;
- d. Be actually received by the Bid Deadline;
- e. Demonstrate to the Advisor, in consultation with the Debtor, the Bidder’s ability to consummate promptly the purchase of the Assets; and
- f. Be irrevocable during the Auction.

Notwithstanding the foregoing, the Auction shall be open to Qualified Bidders who have expressed a serious intent and financial ability to acquire the Assets.

4. **Debtor’s Pre-Auction Discretion.** The Debtor retains the complete discretion in revising these Bid Procedures in accordance with its directive to maximize the value of the sale of the Assets.

5. **Auction.** The Auction will be conducted on **April 21, 2016 at 11:00 a.m. (Eastern Time) at the offices of Goetz Fitzpatrick LLP, One Penn Plaza, 31st Floor, New York, New York 10119.** The Debtor reserves the right to change the location and time of the Auction. The Auction shall be live and in person. The Auction shall be governed by the following procedures:

a. Only representatives of the Debtor and Qualified Bidders, and their respective agents and designated representatives, may participate at the Auction, and only such parties, creditors' attorneys who have advised the Debtor of their intention to attend, the Advisor appointed by Order of the Bankruptcy Court in the Bankruptcy Case and a stenographer shall be present throughout the Auction;

b. Only Qualified Bidders shall be entitled to make any bids beyond the Minimum Opening Bid at the Auction. Provided that the Advisor determines that C.L. Consulting & Management Corp. ("C.L."), Peckham Industries, Inc. ("Peckham") and PCSB Bank have fully complied with Paragraph "1" of these Auction and Sale Procedures (exclusive of the "Minimum Bid" requirements of paragraph 1.b. above), C.L., Peckham and PCSB Bank may credit bid the amount of their respective claims in the amount set forth below. For purposes of the Auction only, the Debtor will concede and the Court shall allow C.L., Peckham and PCSB Bank to credit-bid at the Auction in the amount of \$1,141,502.32, \$5,990,642.13, and \$102,874.53, respectively. Notwithstanding the above, nothing contained herein shall impair either (a) the rights of C.L., Peckham and PCSB Bank to assert additional claims for purposes of allowance or distribution; (b) C.L., Peckham and PCSB Bank's rights to seek an order of the Court permitting them to credit-bid the amount of their claims calculated as of the date of the Auction; and (c) the Debtor's right to object to the validity, extent or amount of any claim filed by C.L., Peckham or PCSB Bank. Nothing contained herein shall be deemed to be an admission of the claims filed or to be filed by C.L., Peckham and PCSB. Nothing contained herein shall be deemed to modify or alter the provisions of the Interim Cash Collateral Order (ECF No. 49);

c. Each Qualified Bidder shall be required to confirm, in writing, that it has not engaged in any collusion with respect to the bidding or the sale;

d. Subject to the credit-bidding rights set forth in paragraph 5.b above, bids following the Minimum Opening Bid may be made by Qualified Bidders in increments of at least \$100,000.00 higher than the Minimum Qualifying Bid; *provided that* the Advisor, in consultation with the Debtor, is authorized to modify such bid increments;

e. The Auction shall continue until there is only one offer that the Debtor and Advisor determine is the highest and best offer submitted at the Auction from among the Qualified Bidders (the "Successful Bid")

f. If more than one Qualified Bidder submits a bid in excess of the Minimum Qualifying Bid, then, after selection of the Successful Bidder, the Debtor and Advisor shall determine which such Qualified Bid constitutes the Back-up Bid, the maker of which shall be required to close on the purchase of the Assets in accordance with the amount of the Back-Up Bid in the event the Subsequent Bidder fails to timely close;

g. In considering bids submitted by Qualified Bidders at the Auction, the Advisor may request that Qualified Bidders provide for the Advisor's review at the Auction financial information that fairly and reasonably demonstrates such Bidder's ability (and the sources of the Bidder's ability) to close on its purchase of the Assets;

h. Deposits submitted by Qualified Bidders who do not become the Successful Bidder or Back-up Bidder shall be returned by the Escrow Agent to such Qualified Bidders within two (2) Business Days after the Auction without deduction for any reason, except as otherwise provided herein;

i. Bids at the Auction must be without contingencies;

j. The Debtor shall convey the Assets (and Other Assets, if applicable) by delivery of a sale agreement, bill of sale, or other conveyance documents in a form reasonably acceptable to the Debtor and the Successful Bidder, "AS-IS, WHERE-IS," without covenants; and

k. The proceeds from sale, if any, shall be used to pay any customary and usual transfer taxes, assessments or charges accrued in connection with the sale of the Assets and amounts to which the Debtor is entitled pursuant to 11 U.S.C. §506(c) to satisfy the commissions and expenses of the Advisor, subject to a reservation of rights by all parties to seek or challenge the payment of any other commissions, fees or expenses of the Debtor and its other professionals pursuant to 11 U.S.C. §506(c). Notwithstanding the foregoing, nothing contained herein shall be construed to authorize the payment of any income tax that may be due from the Debtor as a result of the Auction. Nothing contained herein shall or may be construed to impair the Debtor's rights to avail itself of the benefits afforded under § 1146 of the Bankruptcy Code.

l. The Debtor shall electronically file a status letter on the chapter 11 docket describing the results of the Auction within two (2) business days following the Auction.

6. **Obligation to Close and Default.**

a. The Successful Bidder (or, upon consent granted by the Debtor in writing at or prior to the Closing, an assignee of the Successful Bidder) shall close on the purchase of the Assets (and Other Assets, if applicable) and pay the amount of the Successful Bid, less its Deposit previously posted, in immediately available funds to the Debtor via wire instructions to be provided by the Debtor in advance of the Closing Date, **to be actually received by no later than 10:00 a.m. E.S.T. on the Closing Date, with TIME BEING OF THE ESSENCE AS TO THE SUCCESSFUL BIDDER'S OBLIGATION TO CLOSE ON THE CLOSING DATE AND TO PAY THE BALANCE OF THE PURCHASE PRICE AT THE CLOSING.** There is no contingency of any kind or nature that will permit the Successful Bidder not to proceed at the Closing other than the inability of the Debtor to deliver title to the Assets, along with an Order approving the sale in a form satisfactory to the Debtor and the Successful Bidder, which Order shall contain, upon the Court's finding, the protections afforded by Section 363(m) of the Bankruptcy Code. In the event the Successful Bidder shall fail to timely close the purchase of the Assets, the Successful Bidder shall be in default and the Successful Bidder shall forfeit its Deposit.

b. If for any reason the Successful Bidder shall fail to timely close the sale of the Assets (and Other Assets, if applicable) and the Debtor determines to proceed with the Back-up Bid, the Back-up Bidder (or, upon consent granted by the Debtor in writing at or prior to the Back-up Closing Date, an assignee of the Back-up Bidder) shall close on the purchase of the Assets and pay the amount of the Back-up Bid, less its Deposit previously posted, in immediately available funds to the Debtor via wire instructions to be provided by the Debtor in advance of the Closing Date, **to be actually received by no later than 10:00 a.m. E.S.T. on the Closing Date, with TIME BEING OF THE ESSENCE AS TO THE BACK-UP BIDDER'S OBLIGATION TO CLOSE ON THE BACK-UP CLOSING DATE AND TO PAY THE BALANCE OF THE PURCHASE PRICE AT THE CLOSING.** If the Debtor proceeds with the Back-up Bid then the Back-up Bidder shall be obligated to close and there shall be no contingency of any kind or nature that will permit the Back-up Bidder not to proceed on the Back-up Closing Date other than the inability of the Debtor to deliver title to the Assets (and Other Assets, if applicable). In the event the Back-up Bidder shall be obliged, but shall fail, to timely close the purchase of the Assets, the Back-up Bidder shall be in default and the Back-up Bidder shall forfeit its Deposit.

7. **Deposits of Successful Bidder and Back-up Bidder.**

a. The Successful Bidder shall supplement the Deposit so that immediately following the Auction, its aggregate Deposit equals ten percent (10%) of the Successful Bid. All supplemental Deposits shall be paid in certified funds or bank cashier's check made payable to and delivered to the Escrow Agent at the Auction. The Deposit submitted by the Successful Bidder shall be held in escrow by the

Escrow Agent pending the closing of the sale. The Successful Bidder's Deposit shall be applied to the sale price upon the closing of the sale, unless the Successful Bidder shall default and fail to close and forfeit its Deposit, in which case the Deposit shall be retained by the Debtor for the benefit of the estate and its creditors.

b. The Deposit submitted by the Back-up Bidder shall be held in escrow by the Escrow Agent until the Closing; provided, however, if the Successful Bidder fails to close and the Debtor proceeds with the Back-up Bid, then the Back-up Bidder's Deposit shall continue to be held by the Escrow Agent and shall be applied to the sale price upon the closing of the sale on the Back-up Closing Date, unless the Back-up Bidder shall default and fail to close and forfeit its Deposit, in which case the Deposit shall be retained by the Debtor for the benefit of the estate and its creditors. In the event the Successful Bidder fails to close, the back-up Bidder shall supplement its Deposit to an amount which is ten (10%) percent of the Back-up Bid by certified funds or bank cashier's check made payable to the Escrow Agent and payable within two (2) business days of the Back-up Bidder being notified that it is now the highest and best Bid.

c. For the sake of clarity, the Deposit shall be refunded without deduction (i) within two (2) days in the event such Bidder is not the Successful Bidder; or (ii) the Debtor fails to close on the Closing Date and the reason for such failure is not the fault of the Successful Bidder.

8. **Due Diligence.** Each Bidder is solely responsible for conducting its own due diligence and **must** complete its due diligence prior to the submission of its Bid. Upon written or emailed request, the Advisor will provide a basic diligence package to Bidders who express interest in receiving same, but only upon such Bidder's acknowledgment that any Bid it places is based solely on the results of its own due diligence. Each Bidder may be allowed to inspect the Canal Plant upon written request to Debtor's counsel on such date(s) that are convenient to the Debtor. Bidders shall be permitted to conduct environmental audits of the Canal Plant at their sole cost and expense. Notwithstanding the above, a Bidder may not be permitted the right to inspect or conduct environmental audits unless and until each Bidder (a) executes and delivers to Debtor's counsel a confidentiality agreement acceptable to the Debtor; and (b) secures insurance coverage in a form and content acceptable to Debtor covering the estate for any and all damages which are caused as a result of such inspection or audit.

9. **Reservation of Rights.** In the interest of maximizing the results realized through the Auction, the Debtor reserves the right, in its business judgment, to: (a) modify any of the deadlines set forth in these Auction Procedures; (b) modify or waive, at or prior to the close of the Auction, the procedures and terms and conditions regarding the sale of the Assets; (and Other Assets, if applicable) and/or (c) adjourn the Auction and/or Closing, provided that PCI consents to the foregoing modifications, waiver or adjournment.

10. **Additional Terms, Conditions and Procedures.**

a. Except as otherwise set forth in the PCI APA, the Debtor's interest in the Assets (and Other Assets, if applicable) is being sold "AS IS," "WHERE IS" in its condition on the Closing Date, without any representations, covenants, guarantees or warranties by the Debtor of any kind or nature whatsoever, free and clear of any liens, claims or encumbrances of whatever kind or nature (collectively, the "Liens"), with such Liens, if any, to attach to the proceeds of sale, and subject to any Liens, claims or encumbrances of whatever kind or nature thereafter accrued. Any Liens, claims or encumbrances of whatever kind or nature accruing after the Closing shall be the responsibility of the Bidder acquiring the Assets (and Other Assets, if applicable) at the Closing, and not the Debtor or the Debtor's estate. With respect to the Other Assets, the rights and remedies of all interested parties are expressly reserved pending a final hearing and determination with respect to the proceeds of the sale of any Other Assets.

b. By signing these Auction Procedures, all Bidders acknowledge that they have had the opportunity to review and inspect the Assets (and Other Assets, if applicable) and will rely solely on their own independent investigation and inspection of the Assets (and Other Assets, if applicable) in making their bid. Neither the Debtor nor any of its representatives, including the Advisor and counsel retained by the Debtor, make any representations or warranties with respect to permissible uses of the Assets (and Other Assets, if applicable). All Bidders acknowledge that they have conducted their own due diligence in connection with Assets (and Other Assets, if applicable) and are not relying on any information provided by the Debtor or its professionals.

c. Other than the payment of the Break-Up Fee and the related expense reimbursement due to PCI in the event that it is not the Successful Bidder at Auction, only professionals, brokers or auctioneers duly retained by Order of the Bankruptcy Court shall be entitled to compensation and only to the extent provided for in any Order authorizing such retention.

d. If the Debtor is unable to deliver the Assets (and Other Assets, if applicable) in accordance with these Auction Sale Procedures for any reason whatsoever, the prospective purchaser will have no recourse against the Debtor, its counsel, or the Advisor retained by Order of the Bankruptcy Court; provided, however, that a Qualified Bidder in this circumstance shall be entitled to a return of its Deposit without deduction.

e. It is expressly understood that the Debtor shall not incur any cost or expense whatsoever in connection with the sale of the Assets (and Other Assets, if applicable), except for the fees and expenses of the Debtor's own retained professionals, and the Successful Bidder herewith undertakes to pay any such expense of whatever kind or nature, even those costs and expenses which are payable by the seller pursuant to any law or statute.

f. By participating in the Auction, all Bidders consent to the jurisdiction of the Bankruptcy Court to determine any disputes arising out of the Auction. Any disputes concerning the sale of the Assets (and Other Assets, if applicable) shall be determined by the Bankruptcy Court, which shall retain sole and exclusive jurisdiction over all matters relating to the sale contemplated by these Auction Sale Procedures.

g. The Sale is subject to final approval by the Bankruptcy Court at a hearing to be held on May 4, 2016 at 10:00 a.m. before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York 10601.

THE UNDERSIGNED BIDDER HEREBY CONSENTS TO AND AGREES TO BE BOUND
BY THE FOREGOING AUCTION SALE PROCEDURES:

Print Name of Bidder

Print Name and Title of Authorized
Representative of Bidder

Signature of Authorized Representative

Date:

EXHIBIT A – PURCHASED ASSETS

1. 2010 Komatsu WA-480-6 rubber tire loader
2. 2001 Eagle 1200 crusher
3. 2003 Caterpillar 277B skid steer loader
4. Ford 10-wheeler
5. Various laboratory equipment*
6. On-site stone/aggregates and AC inventory
7. On-site Rap/millings inventory
8. On-site spare plant parts*
9. 1995 Cat 315B excavator
10. Terex RT-230E cherry picker
11. All other parts, materials, sand piles, stone piles, milling piles and other materials located at the Canal Plant that are used or generated in connection with the operation of the Canal Plant*
12. Ingersall Rand 275 compressor
13. Diesel forklift
14. Lincoln diesel welder
15. All other equipment required to run the Canal Plant as may be agreed to by the Debtor and a Qualified Bidder prior to the Auction
16. All executory contracts to which the Debtor is a party as may be agreed to by the Debtor and a Qualified Bidder prior to the Auction
17. Westchester County Certificate to Operate
18. City of Mount Vernon Special Use Permit
19. All other licenses and permits required to operate the Canal Plant

* These items include, but are not limited to, the equipment identified on the attached spreadsheet and financing statements, upon which PCSB Bank asserts a secured claim.

EXHIBIT B – OFFER AND BIDDER REGISTRATION FORM

Bidder, _____, hereby:

- Offers to buy the following Property for the price set forth below, pursuant to this Offer & Bidder Registration Form and the terms and conditions of the Real Estate Purchase Contract available from Advisor, and
- Seeks to become a Qualified Bidder pursuant to the terms and conditions of the Bidding Procedures approved by the United States Bankruptcy Court for the Southern District of New York (“Bidding Procedures”).

Bidder’s offer is for the following Property at the following price:

Property Description	PRICE
Canal Plant and Purchased Assets (collectively, “Assets”)	

Bidder hereby warrants and represents as follows:

- (a) Bidder has received, reviewed, understands and agrees to abide by the terms and conditions of the Bidding Procedures, the terms and conditions of which are incorporated herein by reference.
- (b) Bidder has received, reviewed and understands the terms and conditions of the standard form “Real Estate Purchase Contract,” the terms and conditions of which are incorporated herein by reference.
- (c) To the extent that the words and phrases which are capitalized in this Offer & Bidder Registration Form have been defined in the Bidding Procedures or in the Real Estate Purchase Contract, those definitions are incorporated herein by reference.
- (d) Each Bid made at the Auction shall constitute a binding, irrevocable “Bid” under the Bidding Procedures.
- (e) Each Bid along with any subsequent Bids is irrevocable under the terms of the Bidding Procedures.
- (f) Each Bid is and shall be a good faith, bona fide, irrevocable offer to purchase the Assets on an all-cash, as-is, where-is basis, with no contingencies.
- (g) Bidder has had an opportunity to inspect and examine the Assets and to review all other pertinent documents with respect to the Assets prior to making its Bid and Bidder relied solely on that review and upon its own investigation and inspection of the Assets in making its Bid; and Bidder is not relying upon any written or oral statements, representations, or warranties of the Debtor, Debtor’s Counsel and/or Advisor or any of Debtor’s other agents or representatives.
- (h) The Successful Bidder shall supplement its Deposit so that immediately following the Auction, its aggregate deposit being held by the Escrow Agent equals ten percent (10%) of the Successful Bid. **All supplemental Deposits shall be paid in certified funds or bank cashier’s check made payable to the Escrow Agent.**
- (i) Both the Successful Bidder and the Back-up Bidder shall modify and re-execute the Real Estate Purchase Contract, as appropriate, without varying its terms other than to reflect the terms of

the Successful Bid as publicly announced at the Auction.

- (j) Bidder acknowledges that, pursuant to, *inter alia*, 18 U.S.C. Section 371, it is a federal crime to engage in collusive bidding or to chill the bidding.

AGREED & ACCEPTED this ____ day of _____, 201__

By: _____

BIDDER I.D.

Bidder's Address: _____

Bidder's Contact: _____

Bidder's Phone & Facsimile Numbers: _____

Bidder's Email Address: _____

Bidder's Tax ID Number: _____

ATTORNEY I.D.

Bidder's Attorney: _____

Bidder's Attorney's Address: _____

Bidder's Attorney's Phone & Facsimile Numbers: _____

Bidder's Attorney's Email Address: _____

BANK REFERENCE

Bank & Bank Contact: _____

Bank Address: _____

Bank Contact's Phone Number: _____

Bank Contact's Email Address: _____