

**EXHIBIT 1**  
**GOPHER STATE ETHANOL, LLC**

**BIDDING AND SALE PROCEDURES**

Set forth below are the bidding and sale procedures (the "Bidding Procedures") to be used with respect to the prospective sale(s) (the "Sale(s)") of the business and assets of **Gopher State Ethanol, LLC** ("Seller"). Seller's assets will be offered through its Selling Agent, Bidity Industrial Assets, Inc. The Seller will seek entry of an order from the Bankruptcy Court authorizing and approving Sale(s) of the assets to the Qualified Bidder(s) (as hereinafter defined) as the Seller, in the exercise of its business judgment, after consultation with Bruce Hendry and GDN Holdings, LLC (the "Lender") and the Official Committee of Unsecured Creditors (the "Committee"), determines to have made the highest or otherwise best offers to purchase assets (the "Successful Bidder(s)").

**I. ASSETS TO BE SOLD**

The Seller is offering for sale substantially all its operating assets and business (the "Assets"), except for the Excluded Assets (as defined below), in the lots or groups of lots set forth below in order to achieve the highest or otherwise best collective value for the Assets. The descriptions of the lots are as follows:

- Lot 1:**        Entire Business. All of the Assets as a single unit (the "Entire Business").
- Lot 2:**        Real Estate. The real property located at 882 W. 7<sup>th</sup> Street, St. Paul, Minnesota.
- Lot 3:**        Ethanol Plant. The personal property located at the above address which constitutes the ethanol production facility formerly operated by Seller.
- Lot 4:**        Combination. Any combination of the lots described above as may be designated by a Qualified Bidder.

**II. EXCLUDED ASSETS**

Anything here to the contrary notwithstanding, Seller shall retain and shall not sell, convey, transfer, assign or deliver any interest in the following assets and properties (the "Excluded Assets"):

- A.**    Any cash and cash equivalents whatsoever, whether on hand, in banks or elsewhere.
- B.**    All accounts, accounts receivable, contract rights to payment, notes or notes receivable.
- C.**    all avoidance actions, including those arising under 11 U.S.C. §§ 510, 545-550 and applicable state law.
- D.**    All deposits.

- E.** All supplier rebates and credits, insurance refunds, policies, or proceeds, tax refunds or other tax benefits arising from Seller's operation of the business.
- F.** Any and all incorporation documents, corporate minutes, financial records, income tax returns and any other documentation necessary for Seller to conclude the administration of the chapter 11 bankruptcy proceeding.
- G.** U.S. tax net operating losses of the Seller.
- H.** All of Seller's rights to overfunding and refunded assets from employee benefits plans.
- I.** All proceeds from causes of action and litigation rights existing in favor of Seller in pending litigation.
- J.** All of Seller's rights to Ethanol Producer Payments under Minnesota Statute sec. 41A.09.

### **III. RESERVATION OF RIGHTS**

Seller reserves the right to enter into agreements for Sales of the Assets, individually or as part of a group, without further notice to any party until 24 hours before the Auction (as hereinafter defined) which agreements, if any, shall be subject to higher or otherwise better bids at the Auction. The Seller may offer in such agreements termination fees or other forms of bid protection as authorized by the Bankruptcy Court and described herein. Seller shall retain all rights to the Assets that are not subject to a bid accepted by the Seller and approved by the Bankruptcy Court at the Sale Hearing (as hereinafter defined).

### **IV. THE BIDDING PROCESS**

Seller, in consultation with the Lender and the Committee, shall (i) determine whether any person is a "Qualified Bidder" (as described below), (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations of the Assets, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Assets (collectively, the "Bidding Process"). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Seller nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Qualified Bidder. The Seller shall have the right to adopt such other rules for the Bidding Process which in its sole judgment, will better promote the goals of the Bidding Process and which are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court Order.

### **V. PARTICIPATION REQUIREMENTS**

Unless otherwise ordered by the Bankruptcy Court for cause shown or as otherwise determined by the Seller in its sole discretion, to participate in the Bidding Process, each person (a "Potential Bidder") must deliver (unless previously delivered) to Biditup and the Seller:

- A.** An executed confidentiality agreement in form and substance satisfactory to the Seller (if necessary);

- B.** Current audited financial statements of the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited financial statements of the equity holder(s) of the Potential Bidder, or such other form of financial disclosure acceptable to the Seller demonstrating such Potential Bidder's ability to close a proposed transaction; and
- C.** A preliminary proposal regarding (i) the Assets sought to be acquired, (ii) the purchase price, (iii) the structure and financing of the transaction (including the amount of equity to be committed and sources of financing), (iv) any additional conditions to closing that it may wish to impose, and (v) the nature and extent of additional due diligence it may wish to conduct.
- D.** A written acknowledgment by the Bidder that it agrees to all of the terms for sale set forth in these Bidding Procedures.
- E.** Written evidence that the Bidder has obtained authorization and approval from its Board of Directors (or comparable governing body) with respect to the submission of its bid and acceptance of the terms of sale set forth in these bidding procedures, or representation that no such authorization or approval is required.

The Lender and the Committee shall be provided with copies of the documents described in subparagraphs A, B, C, D and E above within one (1) day of receipt of same by the Debtors. Such bids shall be delivered to counsel for the Lender and the Committee via email, facsimile or overnight delivery.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs A, B, C, D and E above, whose financial information demonstrates the financial capability of the Potential Bidder to consummate the Sale, and that the Seller determines is reasonably likely (based on availability of financing, experience and other considerations) to submit a bona fide offer and to be able to consummate the Sale if selected as the Successful Bidder.

Within five business days after a Potential Bidder delivers all of the materials required by subparagraphs A, B, C, D and E above, but no later than two days before the Bid Deadline, the Seller shall determine, and shall notify the Potential Bidder whether the Potential Bidder is a Qualified Bidder. At the same time that the Seller notifies the Potential Bidder that it is a Qualified Bidder, the Seller shall allow the Qualified Bidder to conduct due diligence with respect to the Assets sought to be acquired as hereinafter provided.

## **VI. DUE DILIGENCE**

The Seller shall afford each Qualified Bidder due diligence access to the Assets to be acquired. The Seller will designate a representative to coordinate all reasonable requests for due diligence from such bidders. Qualified Bidders who make an acceptable preliminary proposal will have the opportunity to review such due diligence at a data room at a location designated by the Seller. The Seller shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). Neither the Seller nor any of its representatives are obligated to furnish any information relating to the Assets to any person except to a Qualified

Bidder who makes an acceptable preliminary proposal. Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Seller or its representatives.

## **VII. BID DEADLINE**

A Qualified Bidder that desires to make a bid shall deliver a written copy of its bid to Bidityup, 11426 Ventura Blvd, Studio City CA 91604, attention Steven Mattes, and to Ravich Meyer Kirkman McGrath & Nauman, P.A., 4545 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, Attention: Michael L. Meyer, not later than **5:00 p.m. CST on February 17, 2005** (the "Bid Deadline"). Seller's attorney shall then distribute copies of the bids to (i) counsel for the Lender, and (ii) counsel for the Unsecured Creditors Committee. The Seller may extend the Bid Deadline once or successively, but is not obligated to do so.

## **VIII. BID REQUIREMENTS**

- A.** All bids must include the following documents (the "Required Bid Documents"):
- 1.** A letter stating that the bidder's offer is irrevocable until the later of (i) two (2) business days after the Assets upon which the bidder is bidding have been disposed of pursuant to these Bidding Procedures, and (ii) fifteen (15) days after the Sale Hearing.
  - 2.** An executed copy of an asset purchase agreement in the form provided by the Seller. Any changes to the asset purchase agreement form provided by Seller must be made to and marked on such form agreement and agreed to by the Seller (the "Asset Purchase Agreement").
  - 3.** A good faith deposit (the "Good Faith Deposit") in the form of a certified check (or other form acceptable to the Seller in its sole discretion) payable to the order of the Seller (or such other party as the Seller may designate) in an amount equal to at least five percent (5%) of the value of such bid.
  - 4.** Written evidence of a commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to the Seller in its sole discretion.
- B.** The Seller will consider a bid only if the bid is on terms acceptable to Seller and not conditioned on other conditions unacceptable to the Seller.
- C.** A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid."

## **IX. BID PROTECTION**

Any bid protection to be offered to a Potential Bidder must be approved by the Bankruptcy Court after notice and a hearing.

## X. "AS IS, WHERE IS"

The sale of the Assets shall be on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by the Seller, its agents or its estate except to the extent set forth in the applicable Asset Purchase Agreement(s) of the successful Bidder(s) as accepted by Seller. Except as otherwise provided in such Agreements, all of Seller's right, title and interest in and to the Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and thereagainst (collectively, the "Interests") in accordance with and to the full extent allowed under section 363 of the Bankruptcy Code with such interests to attach to the net proceeds of the sale(s) of the Assets in the order of their priority, with the same validity, force and effect which they now have as against the Assets. If the real estate taxes and related charges on the Real Property payable to Ramsey County are not paid upon sale of the Real Property, the Real Property shall remain subject to the lien for those real estate taxes and related charges.

Each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidders, the respective Asset Purchase Agreement(s).

## XI. AUCTION

After all Qualified Bids have been received, the Seller shall conduct an auction (the "Auction") with respect to any Assets as to which a Qualified Bid has been received. At the time of the Auction, no bid will be deemed to be a Qualified Bid, regardless of whether it was treated by the Seller as a Qualified Bid prior to the date of the Auction, unless such bid constitutes a Firm Offer. The Auction shall take place at **9:30 a.m. CST on February 18, 2005**, at the offices of Ravich Meyer Kirkman McGrath & Nauman, 4545 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota, or such later time or other place as the Seller shall notice all Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder who has previously submitted a Qualified Bid will be eligible to participate at the Auction. Based upon the terms of the Qualified Bids received, the level of interest expressed as to particular Assets, and such other information as the Seller determines are relevant, the Seller, in its sole discretion, may conduct the Auction in the manner it determines will result in the highest or otherwise best offer for the Assets. Any Qualified Bid competing with any other Qualified Bid as to which Seller has agreed to provide Bid Protection must exceed the original Qualified Bid by an amount at least equal to the Bid Protection.

The auction will be conducted in a manner designed, in the discretion of Seller and Biditup, to maximize the value of the assets. In particular, the Seller may commence the Auction by entertaining bids for the Entire Business, followed thereafter by bids for other lots as the Seller may determine. Qualified Bidders will be permitted to increase their bids. The Seller thereafter may offer the Assets in such lots in such successive rounds as the Seller determines to be appropriate so as to obtain the highest or otherwise best bid or combination of bids for the Assets. The Seller also may set opening bid amounts in each round of bidding as the Seller determines to be appropriate.

By participating in the bid process, Bidders acknowledge that a bidder's premium of 1.5% to 10% will be charged in connection with the sale of each lot according to the terms of the Exclusive Agency Agreement between Seller and Bidityup.

Upon conclusion of the Auction, the Seller, in consultation with the Lender and the Committee, shall (i) review each Qualified Bid or Bids on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) identify the highest and otherwise best offer, or group of offers for the Assets (the "Successful Bid(s)"). At the Sale Hearing, the Seller shall present the Successful Bid(s) to the Bankruptcy Court. The Seller may adopt rules for the bidding process at the Auction that, in its judgment, will better promote the goals of the bidding process and that are not inconsistent with any of the provisions of the Bankruptcy Code, any Bankruptcy Court order, or these Bidding Procedures.

If **no Qualified Bids** are received by the Bid Deadline under the procedure described above, Bidityup shall conduct a **Public Auction of the Real Property and the Personal Property at the Seller's business location, 882 West Seventh Street, St. Paul, MN on March 16, 2005**. Bidityup shall publish the rules for the Public Auction in the ordinary course of its business. All sales at the Public Auction will be final and not subject to further Bankruptcy Court review.

## **XII. RIGHTS OF THE LENDER**

The Debtor and its representatives, advisors and agents shall not disqualify any potential bidders or reject any bids, without first disclosing such bids or potential bidders to the Lender and the Committee. Furthermore, the Debtor may agree to modify any of the Bidding Procedures provided that such modifications are agreed to in writing by the Debtor, the Lender and the Committee. Debtor, the Lender or the Committee may file a motion to modify such Bidding Procedures, if an agreement cannot be reached.

Any deadline contained in the Bidding Procedures or any term thereof may be modified upon the written consent of the Debtor, the Lender, and the Committee, or alternatively, upon Court approval after notice and a hearing.

Nothing in the order limits the right of the Lender or the Committee to object on any grounds to any relief subsequently requested by Debtor.

## **XIII. ACCEPTANCE OF QUALIFIED BIDS**

The Seller shall request authority to sell the Assets for the highest or otherwise best Qualified Bid(s) received as determined in the sole discretion of the Seller after consultation with the Lender and the Committee. The Seller's presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Seller's acceptance of the bid. The Seller will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

## **XIV. SALE HEARING**

The Sale Hearing is scheduled to commence at **10:00 am CST on February 23, 2005** at the United States Bankruptcy Court for the District of Minnesota, located in Courtroom 228A, 316 North Robert St., St. Paul, Minnesota. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing. At the Sale Hearing, the Seller shall present the Successful Bid(s) for the Assets to the Bankruptcy Court for approval.

Following the Sale Hearing approving the sale of Assets to a Successful Bidder(s), if such Successful Bidder(s) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder(s), the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be deemed to be the Successful Bid and the Seller shall be authorized to effectuate such sale without further order of the Bankruptcy Court.

#### **XV. RETURN OF GOOD FAITH DEPOSIT**

Good Faith Deposits of all Qualified Bidder shall be held in escrow until the earlier of (i) three (3) business days after all Assets upon which the bidder is bidding have been disposed of pursuant to these Bidding Procedures or (ii) thirty-one (31) days after the Sale Hearing.

#### **XVI. MODIFICATIONS**

The Seller may determine, in its business judgment after consultation with the Lender and the Committee, which Qualified Bid(s), if any, is the highest or otherwise best offer; and may reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that, in the Seller's sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (ii) contrary to the best interests of the Seller, its estate, and its creditors. At or before the Sale Hearing, the Seller may impose such other terms and conditions as it may determine to be in the best interests of the Seller's estate, its creditors and other parties in interest.