

17 Pages

THOMAS A. WILLOUGHBY, State Bar No. 137597
 PAUL J. PASCUZZI, State Bar No. 148810
 FELDERSTEIN FITZGERALD
 WILLOUGHBY & PASCUZZI LLP
 400 Capitol Mall, Suite 1750
 Sacramento, CA 95814
 Telephone: (916) 329-7400
 Facsimile: (916) 329-7435
 twilloughby@ffwplaw.com
 ppascuzzi@ffwplaw.com

Attorneys for the Chapter 11 Trustee,
 W. Donald Gieseke

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re:

ECS REFINING, INC.,

Debtor.

CASE NO.: 18-22453-D-11

Chapter 11

DCN: FWP-17

Date: July 25, 2018 [Per OST]
 Time: 10:00 a.m.
 Courtroom: 34
 501 I Street, 6th Floor
 Sacramento, CA

**ORDER GRANTING CHAPTER 11 TRUSTEE'S MOTION FOR AUTHORITY TO
 SELL DEBTOR'S CUSTOMER LIST AND INTELLECTUAL PROPERTY INCLUDING
 CERTAIN OTHER PERSONAL PROPERTY RELATED TO DEBTOR'S AMS
 BUSINESS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES
 PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

The motion of W. Donald Gieseke, the duly-appointed and acting Chapter 11 Trustee (the "Trustee") in the ECS Refining, Inc. (the "Debtor") case, for Authority to Sell Debtor's Customer List and Intellectual Property Including Certain Other Personal Property Related to Debtor's AMS Business Free and Clear of Liens, Claims, and Encumbrances Pursuant to Section 363 of the Bankruptcy Code (the "Motion") filed on July 13, 2018 [Dkt. No. 312] came for hearing on July 25, 2015, at 10:00 a.m. (the "Sale Hearing"). Appearances were as noted on the record. Findings of fact and conclusions of law are stated in the civil minutes for the hearing. After considering all the documents filed with respect to the Motion; considering and taking all qualifying bids made at the Sale Hearing; and it appearing that the sale (the "Sale") of the

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July 26, 2018

CLERK, U. S. BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
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1 Debtor's customer lists and intellectual property, including certain other personal property related
2 to Debtor's Asset Management Services ("AMS") portion of its business (collectively, the
3 "Subject Assets") to Dynamic Recycling, Inc. ("Buyer"), substantially in accordance with the
4 terms and conditions set forth in the Motion, the Asset Purchase Agreement attached hereto as
5 Exhibit 1 ("APA"),¹ and announced in open court at the Sale Hearing is in the best interests of
6 the bankruptcy estate, its creditors and all other parties in interest; and after due deliberation and
7 sufficient cause appearing therefor,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 9 1. The relief requested in the Motion is granted.
- 10 2. Notice of the Motion, the Sale Hearing, and the sale of the Subject Assets free and
11 clear of the specified liens was fair and proper under the circumstances and complied in all
12 respects with Bankruptcy Code § 102(1) and Bankruptcy Rules 2002 and 6004.
- 13 3. The overbid qualifications attached hereto as Exhibit 2 are hereby approved, were
14 agreed to by all qualified overbidders including the Buyer, and the terms of which are
15 incorporated herein by this reference.
- 16 4. The sale of the Subject Assets and the terms and conditions of the APA be, and
17 hereby are, authorized and approved subject to the terms of this Order.
- 18 5. The Purchase Price (as defined in the APA) for the sale of the Subject Assets of
19 \$330,000.00 was set at the Sale Hearing and is fair and reasonable and shall be deemed to
20 constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy
21 Code and any other applicable law.
- 22 6. The Trustee shall be, and hereby is, authorized to sell and convey the Subject
23 Assets, fully perform under, consummate, and implement the terms of the APA together with any
24 and all additional instruments and documents that may be reasonably necessary or desirable in
25 connection with implementing and effectuating the terms of the APA, this Order, and/or the sale
26 of the Subject Assets, and to take all further actions as may reasonably be requested by the Buyer

27
28 ¹ All capitalized terms used in this Order shall have the meanings ascribed to them in the APA,
unless otherwise indicated.

1 for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer, as
2 may be necessary or appropriate to the performance of the Trustee's obligations as contemplated
3 by the APA, without any further corporate action or orders of this Court.

4 7. Pursuant to Bankruptcy Code § 363(f), effective as of the Closing, the sale of the
5 Subject Assets by the Trustee to the Buyer shall vest the Buyer with all right, title, and interest of
6 the Debtor's estate in, against and/or relating to the Subject Assets free and clear of the liens,
7 claims and encumbrances of SummitBridge National Investments V LLC ("SummitBridge")
8 pursuant to section 363(f)(2). All liens, claims and encumbrances of SummitBridge shall attach
9 to the proceeds of the sale in the same order and priority as they exist, if any, on the Subject
10 Assets. All sale proceeds shall be held in a blocked, separate account pending further order of the
11 Court. In the event any other liens become an issue, the Trustee and/or Buyer may seek further
12 relief from the Court, on shortened time, to amend this Order.

13 8. Nothing in this Order or the APA releases, nullifies, precludes or enjoins the
14 enforcement of any police or regulatory liability to a governmental unit that any entity would be
15 subject to as the post-sale owner or operator of property after the date of entry of this Order.
16 Nothing in this Order or the APA authorizes the transfer or assignment of any governmental (a)
17 license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of
18 any obligation thereunder, without compliance with all applicable legal requirements and
19 approvals under police or regulatory law.

20 9. The stay imposed by Bankruptcy Rule 6004(h) is hereby waived, and this Order
21 shall be effective and enforceable immediately upon entry of this Order and its provisions shall be
22 self-executing. In the absence of any person obtaining a stay pending appeal, the Trustee and the
23 Buyer are free to close under the APA at any time, subject to the terms of the APA.

24 10. Buyer is a good faith purchaser within the meaning of Section 363(m).

25 11. The Subject Assets shall not include any of the following with respect to Comcast
26 Cable Communications LLC, Comcast Cable Communications Management, LLC, and certain of
27 their operating affiliates and subsidiaries (collectively, "Comcast"): (a) the property Comcast
28 delivered to the Debtor is not included in the "inventory" or other assets to be sold and delivered

1 to Buyer, (b) the orange and blue crates as well as the other metal cages and crates that Comcast
2 owns and that the Debtor uses in connection with providing services to Comcast are not included
3 in the “wheeled totes and wheeled crates” or other assets to be sold to the Buyer, (c) that Comcast
4 remains authorized to have the property it delivered to the Debtor for processing transferred to
5 another entity with whom Comcast has an existing relationship for processing, and (d) that
6 Comcast shall be entitled to obtain records from the Debtor or Buyer with respect to property
7 processed by the Debtor, which records Comcast requires to be able to satisfy its reporting
8 requirements under applicable law and the California Consent Decree (as defined in Comcast’s
9 Limited Objection to the Sale Motion).

10 12. The Court hereby approves RSR Partners, LLC, dba Regency Technologies
11 (“Regency”) as the next highest qualified bidder for the Subject Assets. In the event the sale of
12 the Subject Assets to the Buyer is not consummated, the Trustee is authorized, but not required, to
13 consummate a sale to Regency on substantially the same terms as the APA at the adjusted sale
14 purchase price of \$320,000, without further order or approval of this Court; provided however,
15 that neither the Trustee nor Regency is obligated in any manner to proceed with such sale.

16 13. This Court shall and hereby does retain jurisdiction to enforce the terms and
17 provisions of this Order and the APA (including, without limitation, all documents and
18 instruments executed in connection with the Closing) in all respects and to decide any disputes
19 concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder.

20 14. The provisions of this Order and any actions taken under this Order shall survive,
21 and the validity of the sale approval granted hereby shall not be affected by, the dismissal of the

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1 above-captioned case, or its conversion to another chapter of the Bankruptcy Code, and the terms
2 and provisions of this Order shall continue in full force and effect notwithstanding the entry of
3 any order with respect to such dismissal or conversion, and shall be binding in all respects on any
4 further trustee appointed in this case.

5 APPROVED AS TO FORM

6 MARKUS WILLIAMS YOUNG &
7 ZIMMERMANN LLC

ATTORNEY GENERAL OF CALIFORNIA

8 By: /s/ James T. Markus
9 JAMES T. MARKUS
10 Attorneys for SummitBridge National
Investments V LLC

By: /s/ Margarita Padilla
MARGARITA PADILLA
Attorneys for the California Department
of Toxic Substances Control

11 BALLARD SPAHR LLP

TRODELLA & LAPPING LLP

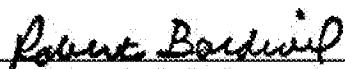
12 By: /s/ Matthew G. Summers
13 MATTHEW G. SUMMERS
14 Attorneys for Comcast Cable
Communications LLC & Comcast Cable
Communications Management, LLC

By: /s/ Robert Trodella
ROBERT TRODELLA
Attorneys for RSR Partners, LLC
dba Regency Technologies

15 BOSSHARD | PARKE LTD.

16 By: /s/ Andrew Bosshard
17 ANDREW BOSSHARD
18 Attorneys for Dynamic Recycling, Inc.

19
20 **Dated:** July 26, 2018

21
22 
23 Robert S. Bardwil, Judge
24 United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT

EXHIBIT 1

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated July 13, 2018 by and among ECS Refining, Inc., a Delaware corporation, by and through W. Donald Gieseke, acting in his capacity as Chapter 11 Trustee for the bankruptcy estate of ESC Refining, Inc. ("Seller") and Dynamic Recycling Inc., a Wisconsin corporation ("Buyer").

WHEREAS, Seller owns and operates an electronic recycling and IT asset management business (the "Subject Business") known as ECS Refining, Inc., with its principal office located in Stockton, California.

WHEREAS, ECS Refining, Inc. is subject to a Chapter 11 bankruptcy in the Eastern District of California on April 24, 2018 (case number 18-22453) and W. Donald Gieseke (the "Trustee") was appointed by the Court as Chapter 11 Trustee on May 8, 2018.

WHEREAS, Seller desires to sell to Buyer and Buyer desires to buy from Seller the following assets: (a) Seller's customer lists, including but not limited to contact information, customer order history, customer data, pricing and sales history, supplier lists, vendor lists, prospect lists, price lists, any and all related vendor and customer relationship software applications including assignment of rights to access and/or ownership of Sugar CRM (license), Makor ERP and CRM (license), and Navision ERP software applications, management, accounting or operational systems software, as well as any ECS server files related to obtaining and servicing the purchased customer list (sales pricing, agreements, customer contact information, addenda, etc.), (b) the seller's domain name, DID numbers, website URLs, telephone numbers, email addresses, the Subject Business name "ECS Refining," the Seller's goodwill and existing client accounts, (c) any and all any wheeled totes and wheeled carts located on or about the premises of the Subject Business related to the AMS (asset management services) business, (d) all AMS (asset management services) inbound, work-in-process, and finished goods inventories located at the Stockton, CA and Mesquite, TX locations as of the date hereof, (e) all inventories located at the Columbus, OH location as of the date hereof, and (f) all AMS inbound or WIP inventories located at the Stockton, CA and Mesquite, TX locations that were received from commercial recycling clients (collectively the "Subject Assets").

WHEREAS, certain assets may be subject to liens and encumbrances and other security interests, thus requiring the agreement of Seller's secured creditors to agree to the release thereof in connection with this transaction.

NOW THEREFORE in consideration of the promises and respective covenants contained herein and the parties hereto intending to be legally bound hereby agree as follows:

1. SALE AND PURCHASE OF SUBJECT ASSETS.

- (a) Subject to the terms and conditions hereof, Seller will sell, convey, assign, transfer and deliver to Buyer at the Closing (as hereinafter defined) and Buyer will purchase and accept at Closing the Subject Assets as defined above.

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Without limiting the generality of the foregoing, the Subject Assets shall include all of the Seller's right, title and interest in the Subject Assets free and clear of all liens and encumbrances.

- (b) Buyer only purchase the inventories of Seller identified in the definition of Subject Assets. Purchaser shall not be responsible to take possession of any other inventories not so included. Any receipt or acceptance by Buyer of any inventories or equipment shall in all cases be subject to approval of the customer from whom Seller obtained such inventory. The Subject Assets shall not include any intellectual property or software tied to machinery or equipment.
- (c) Customer sales for the Subject Business generated up to and including the date of this Agreement shall belong to Seller; Customer sales for the Subject Business generated after the date of this Agreement shall belong to Buyer.
- (d) Customer Transition. Included as a part of the consideration identified above, Seller shall, to the best of its ability, positively recommend Buyer to its customers and shall transition its customer list to Purchaser as follows: (i) Seller shall arrange formal introductions to Seller's top 40 customers to Buyer over the phone or in person by a representative of Seller holding a current relationship with each specific customer, with Buyer bearing the cost of any travel expenses of Seller; and (ii) Seller shall use its best efforts to provide consulting and support services to Buyer in order to transition the customer list to Purchaser in the most effective and positive manner possible, with the goal of making the transition seamless.
- (e) Employee Noncompetition. Included as a part of the consideration identified in above, Seller shall assign to Buyer any rights of Seller under any and all existing noncompetition, nonsolicitation, and nondisclosure agreements, or the like, in effect between Seller and any of its owners, leadership and sales executives and shall deliver true and correct copies of all such agreements to Buyer; provided, however, that Seller makes no warranties that any such an assignment of such rights is enforceable.
- (f) Seller will work with the recycler of all EOL (end of life) recycling material at the Stockton, CA, Mesquite, TX, and Columbus, OH facilities to be sure all devices are destroyed for certified destruction accounts, all material is recycled according to R2 standards, no focus materials are exported to developing countries and all data containing devices are destroyed with a COR/COD delivered to Seller after the work is completed and a copy is given to Buyer. Seller will obtain nondisclosure agreements from all EOL recyclers to ensure no distribution or misuse of Seller's customers names and contact information in a manner inconsistent with the sale of all such data to Buyer.
- (g) With regard to the assignment of rights to access and/or ownership of Sugar CRM (license) and Makor ERP and CRM (license) software applications, Seller shall cooperate in Buyer's efforts to obtain an assignment of such licenses with the licensor's consent and shall give immediate access to Buyer to the



Sugar CRM (license) and Makor ERP and CRM (license) upon Closing. With regard to the Navision ERP, Seller shall use its best efforts to obtain an assignment and turnover of the Navision ERP software with the licensor's consent after Seller finishes all financial reporting necessary in the ECS Refining bankruptcy case; provided however that Seller shall provide access to Navision to Buyer prior to turnover. Seller agrees to maintain the Sugar CRM (license) and Makor ERP and CRM (license) until Closing and the Navision ERP until assignment.

2. PURCHASE PRICE AND PAYMENT; CLOSING.

- a) The purchase price for the Subject Assets shall be One Hundred Sixty Thousand Dollars and No Cents (\$160,000.00) (the "Purchase Price"), payable as follows: (i) an earnest money deposit of \$40,000.00 payable upon execution of this Agreement to be applied to the purchase price upon entry of bankruptcy court order approving sale (or failing such approval, promptly returned to Buyer without interest), and (ii) the remaining \$120,000.00 upon entry of bankruptcy court order approving sale.
- b) At Closing, Buyer shall deliver the Purchase Price to the Trustee or such other party as may be designated by the Trustee, by certified check or wire transfer of immediately available funds to the account specified by the Trustee in exchange for a duly authorized and executed Bill of Sale conveying the Subject Assets free and clear of all liens and encumbrances (the "Bill of Sale").
- c) Post-Closing Bonus. Buyer shall pay to Seller as additional consideration the sum of Thirty Thousand Dollars and No Cents (\$30,000.00) if Buyer is successful securing new business with Comcast and two of the remaining to four Seller customers based on 2017 Seller revenues within forty-five (45) days of the Closing as demonstrated by a new order or invoice timely entered on Buyer's accounting software in the ordinary course of business.
- d) Overbid Procedure. In the event the Closing does not occur due to receipt of competing bids as part of a section 363 sale under the Bankruptcy Code, the parties agree that Buyer may be permitted to increase the Purchase Price by minimum increments of \$10,000.00 (an "Overbid") in such aggregate amount sufficient to match or exceed such competing bids, upon written notice from Buyer to Seller; provided, however, that an initial Overbid by another qualified bidder shall be at least \$30,000 greater than the original Purchase Price.
- e) Bid Protection. In the event the Closing does not occur due to acceptance by Seller of a competing bid, Seller shall, in addition to refunding the earnest money deposit, pay, or cause to be paid, to Buyer a breakup fee in the amount of Buyer's reasonable costs and expenses incurred up to Twenty-Five Thousand Dollars and No Cents (\$25,000.00). This Agreement is conditioned on the court's approval of the breakup fee.
- f) Buyer shall bear the cost of transportation and staff necessary to secure and transport the tangible Subject Assets. Seller shall assist Buyer in locating

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and securing all of the tangible Subject Assets. Buyer shall comply with applicable laws and regulations in the removal and transportation of the tangible Subject Assets.

3. NO LIABILITY.

Buyer shall have no responsibility or liability for any liabilities or obligations of Seller and all liabilities and obligations of the Seller, whether contingent, known or unknown shall remain obligations of the Seller. Without limiting the foregoing, Buyer will not assume any leases or other contracts to which Seller is a party; Buyer will not assume any employee obligations of Seller; Buyer shall have no liability for unpaid taxes of Seller.

4. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer, as of the date of this Agreement as again as the Closing Date, the following:

(a) Title to Subject Assets. Upon entry of an Order of the Bankruptcy Court approving this sale under section 363 of the Bankruptcy Code, Seller has good, marketable, and unencumbered title to the Subject Assets free and clear of all security interests, liens, claims, encumbrances, charges and burdens of any kind or nature whatsoever and has full right and authority to transfer and deliver the Subject Assets. Upon consummation of the transactions contemplated hereby, Seller will have transferred to Buyer good marketable and unencumbered title to the Subject Assets free and clear of all security interests, liens, claims, encumbrances, charges and burdens of any kind or nature whatsoever. Buyer shall have exclusive access to the customer list.

(b) Authority. To the best of Seller's knowledge, information and belief, ECS Refining, Inc. is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power and authority to carry on the Subject Business as presently conducted. Upon approval from the Court, Seller has the full power and authority to execute and deliver this Agreement and every other agreement to be executed and delivered by Seller at the Closing and to consummate the transactions hereby contemplated. All corporate and other proceedings necessary to be taken by Seller, if any, in connection with the transactions provided for by this Agreement and necessary to make the same effective have been duly and validly taken, and this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

(c) Accuracy of Information Furnished. No statement by Seller contained in this Agreement or any schedule attached hereto, and to the best of Seller's knowledge, information and belief, no statement by Seller contained in any other instrument or document furnished by or on behalf of Seller pursuant to

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and required by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit any material fact to which would mislead Buyer.

- (d) Seller represents and warrants that the Subject Assets have not been distributed, sold or otherwise transferred to any other Party that is not a party to this Agreement. The Subject Assets are confidential and are not readily available to the general public or to other entities including but not limited to entities within the Subject Business's industry.
 - (e) There is no litigation or other legal, administrative, or other proceedings or investigation, pending or, to the best of Seller's knowledge, information and belief, threatened against Seller that could reasonably be expected to materially adversely affect in any manner the consummation of the transactions contemplated by this Agreement.
 - (f) Seller shall not engage in any conduct that could reasonably be expected to materially impair Seller's ability to perform its obligations under this Agreement.
 - (g) Seller represents and warrants no breach of confidentiality of AMS customer data has occurred and agrees it shall protect the data on the AMS units through the Closing and provide necessary reporting and assurances to customers regarding the foregoing.
5. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer represents and warrants to Seller, as of the date of this Agreement as again as the Closing Date, the following:
- (a) Authority. Buyer has the power and authority necessary to execute and deliver this Agreement or will obtain the same from the Bankruptcy Court and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding agreement of buyer and is enforceable in accordance with its terms.
 - (b) Consent and Approval. This transaction is explicitly conditioned upon the approval of the Bankruptcy Court and any creditors holding secured liens affecting the Subject Assets.
 - (c) Buyer acknowledges that, except for the representations and warranties made expressly in this Agreement, the sale of the Subject Assets is made on an "AS IS, WHERE IS" condition and basis with all faults and Seller has no obligation

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to make repairs, replacements, alterations or improvements to the assets sold to Buyer.

6. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

The representations and warranties made under and in connection with this Agreement by Seller and Buyer shall be true and correct on the Closing Date and shall survive the Closing and consummation of all the transactions contemplated hereby for a period of five (5) years. The representations and warranties of Seller and Buyer shall automatically expire and terminate on the fifth (5th) anniversary of the Closing Date, to the extent that a claim or claims for breach thereof has not theretofore been made in writing by a party to the other party.

7. CLOSING.

(a) The Closing hereunder shall occur simultaneously with approval by the bankruptcy judge (the "Closing Date"), but no later than July 27, 2018, except as otherwise agreed by the parties, and shall take place at the offices of the Trustee. If bankruptcy court approval has not be obtained by July 27, 2018, Buyer shall have the option exercisable in its sole discretion to extend the Closing for such period of time necessary to allow for court review and approval, or to terminate this Agreement and receive a return of earnest money.

(b) The transactions contemplated hereby shall be effective as of the beginning of business on the Closing Date.

(c) Seller Deliveries. On the Closing Date Seller shall deliver:

- (i) the Bill of Sale executed by the Seller;
- (ii) an Order from the Bankruptcy Court authorizing the sale;
- (iii) a Certificate executed on behalf of the Seller that the representations and warranties contained herein are true and correct as of the Closing Date;
- (iv) copies of all lien releases from any secured parties holding with liens or security interests in the Subject Assets; and
- (v) any other documents reasonably necessary, customary or appropriate hereunder.

(d) Buyer Deliveries. On the Closing Date Buyer shall deliver:

- (i) payment by wire transfer or certified check the amounts due at Closing;
- (ii) a copy of resolutions of the members of Buyer authorizing and approving the transaction set forth herein; and
- (iii) any other documents reasonably necessary, customary or appropriate hereunder.

8. MISCELLANEOUS PROVISIONS.

- (a) Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by first class certified mail (postage prepaid) or overnight courier, and addressed as provided below (or such other address as may be established pursuant to this Section by the party receiving notice):

To the Buyer:

Dynamic Recycling, Inc.
Attn: Miles Harter
N5549 County Rd Z
Onalaska, WI 54650

To the Seller or Trustee:

W. Donald Gieseke
18124 Wedge Pkwy., Suite 518
Reno, NV 89511

- (b) Modification. This Agreement, together with the Exhibits hereto, contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes any and all prior agreements, oral or written, with respect to the subject matter contained herein, and shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto.
- (c) Severability. If any one or more of the provisions of this Agreement shall be held invalid, illegal, or unenforceable in any respect, such provision shall not affect any other provision of this Agreement, and each other provision of this Agreement shall be enforced to the full extent permitted by law.
- (d) Expenses. Whether or not the transactions contemplated hereby are consummated, each of the parties hereto shall pay its own expenses incurred in connection with the authorization, preparation, execution or performance of this Agreement and all transactions contemplated hereby, including without limitation all fees and expenses of agents, representatives, counsel and accountants.
- (e) Assignment. This Agreement shall not be assignable by any party hereto without the prior written consent of the other party, but Buyer can assign this Agreement to a wholly-owned subsidiary of Buyer, provided that Buyer's liabilities and obligations under this Agreement and other closing instruments are not affected by such assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to the successors, legal representatives, and permitted assignees of the parties.
- (f) Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Wisconsin.
- (g) Survival. The terms and provisions of this Agreement and the obligations, warranties, representations, and covenants of the parties contained in this Agreement shall survive Closing and continue in full force and effect

and shall not be merged or extinguished by the act of Closing or the execution and/or delivery of the bill of sale or any other documents or instruments of transfer or assignment.

- (h) No Brokers or Finders. Seller and Buyer represent and warrant to each other that each did not directly or indirectly engage any person, corporation or partnership to bring about the consummation of the transactions contemplated herein, and, that no person, corporation or partnership is entitled to a broker's commission, finder's fee or any similar compensation upon the consummation of the transactions contemplated herein. If this representation and warranty is breached by either Seller or Buyer, the breaching party shall indemnify and hold harmless the other party from any and all claims, demands, liabilities and obligations (and any and all expenses and costs incurred in connection with or in defending against the same), which may arise due to any third party's claim as a broker or finder.
- (i) Further Assurances. At the request of Buyer, at any time after the Closing, Seller shall execute and deliver such documents without charge or cost as the Buyer or its counsel may reasonably request to effectuate the purposes of this Agreement. Seller shall use commercial best efforts to assist Buyer in locating and securing all of the Subject Assets.
- (j) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

ECS REFINING, INC.



By: **W. DONALD GIESEKE**, solely in his capacity as Chapter 11 Trustee
for the bankruptcy estate of ESC Refining, Inc.

DYNAMIC RECYCLING, INC.



By: Miles Harter
Its CEO



EXHIBIT 2

Overbid Qualifications
ECS Refining Inc. Motion to Sell Customer List FWP-17

Case No. 18-22453

1. Bidder must qualify at least 24 hours prior to the hearing on the Motion.
2. Contact Miles Staglik to qualify 310-343-0361, mstaglik@scpllc.com.
3. Software licenses include access only and do not include transfer of the license unless buyer can obtain the consent of the licensor.
4. Deposit of \$40,000 to Trustee counsel at hearing by cashier's check or prior to hearing by wire transfer. If by wire transfer, deposit will be returned without interest if not the successful bidder (because deposit will be in attorney's client trust account which does not bear interest).
5. APA signed by the Buyer must be in substantially in the form submitted with the Motion, including that the Subject Assets will be sold "AS IS, WHERE IS."
6. Overbids will be taken in open court at the hearing, unless otherwise ordered by the Court.
7. By making a bid, buyer acknowledges it is responsible for presenting a written plan for removing anything from the Stockton, California facility that is approved by the California Department of Toxic Substances Control. Same as to the Mesquite, Texas facility and the Ohio facility with respect to the applicable regulators in those states.
8. Any AMS inventory to be sold may be consigned and subject to recovery by the consignor. Responsibility for turnover of consigned items after Closing rests with the successful bidder.
9. Order provision must include the following: *Nothing in this Order or the Asset Purchase Agreement releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Order. Nothing in this Order or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law.*
10. Order provision must include the following: *Buyer shall handle any personally identifiable information subject to section 363(b)(1) in a manner that is consistent with the Debtor's policy existing as of the petition date.*
11. If Buyer is not able to obtain required regulatory approval to remove purchased assets from all applicable locations within 15 days of the hearing approving the sale, it will forfeit its deposit and the Trustee may proceed with a sale to any next back up bidder.