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Justice Hillier

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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT CROWN CAPITAL PARTNER FUNDING LP, by its manager,  
CROWN PRIVATE CREDIT PARTNERS INC.

RESPONDENTS RBEE AGGREGATE CONSULTING LTD.

DOCUMENT FIRST REPORT OF FTI CONSULTING CANADA INC., IN  
ITS CAPACITY AS COURT APPOINTED RECEIVER AND  
MANAGER OF RBEE AGGREGATE CONSULTING LTD.

**APRIL 29, 2022**

ADDRESS FOR SERVICE AND  
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**FIRST REPORT OF THE RECEIVER**

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## INTRODUCTION

1. On March 11, 2022 (the “**Appointment Date**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of RBee Aggregate Consulting Ltd. (the “**RBee**” or the “**Company**”), pursuant to an Order of the Honourable Justice A.D. Grosse (the “**Receivership Order**”).
2. The Receivership Order authorizes the Receiver to, among other things, take possession of the Property, market any or all of the Property and sell, convey, transfer or assign the Property with the approval of this Honourable Court in respect of any transactions in excess of \$50,000.
3. On April 28, 2022 the Receiver filed a Notice of Application seeking an order (the “**Approval and Vesting Order**”):
  - (a) approving an auction services agreement (the “**Auction Services Agreement**”) between the Receiver and McDougall Auctioneers Ltd. (“**McDougall**”) to dispose of the Company’s assets and vesting them in any auction purchaser upon issuance of a bill of sale; and
  - (b) approving the actions, conduct and activities of the Receiver since the Appointment Date.
4. The purpose of this report (the “**First Report**”) is to provide this Honourable Court with information with respect to:
  - (a) the background of the Company and Property;
  - (b) the activities of the Receiver since the Appointment Date;
  - (c) the Receiver’s interim statement of receipts and disbursements for the period from the Appointment Date to April 22, 2022;

- (d) the process undertaken by the Receiver to solicit bids for the Property (the “**Solicitation Process**”);
  - (e) the Auction Services Agreement between the Receiver and McDougall; and
  - (f) the Receiver’s application for the Approval and Vesting Order.
5. The Receivership Order and other publicly available information in respect of these proceedings (the “**Receivership Proceedings**”) is posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/Rbee> (the “**Receiver’s Website**”).

## **TERMS OF REFERENCE**

6. In preparing this First Report, the Receiver has relied upon audited and unaudited financial information, other information available to the Receiver and, where appropriate, the Company’s books and records and discussions with various parties (collectively, the “**Information**”).
7. Except as described in this First Report:
- (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
8. Future oriented financial information reported or relied on in preparing this First Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.

9. Information and advice described in this First Report that has been provided to the Receiver by its legal counsel, Fasken Martineau DuMoulin LLP (the “**Receiver’s Counsel**”), was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

## **BACKGROUND**

### **Business, Assets and Liabilities**

11. RBee’s primary business was the operation of gravel crushing plants in various pits and construction sites across Alberta and British Columbia. Gravel crushing is a seasonal industry with operations typically running from April to the onset of winter, at which point the operations wind-down and RBee lays off most of their operations employees. At the Appointment Date, the Company’s operations were shut down for the winter and the majority of employees had been laid off at the end of the 2021 season. The Company had not secured contracts for the 2022 construction season.
12. The Company has a fleet of approximately 376 pieces of heavy equipment which includes aggregate handling equipment, crushing equipment, wheel loaders and other pieces of heavy equipment. The assets and equipment of the Company are spread out over three main gravel pit sites, the Vogel Pit (Rocky Rapids/Drayton Valley, Alberta) (“**Vogel**”), the Windfall Pit (Whitecourt/Windfall, Alberta) (“**Windfall**”) and Site C (Fort St. John, British Columbia) (“**Site C**”), respectively, and various other third-party or leased locations.

13. At the Appointment Date, the Company was also in possession of 104 pieces of equipment that are subject to ownership claims by A-1 Quality Belting Ltd. (“A-1”) which is a related party owned by one of the former owners of RBee, Mr. Bernie Reed. The Receiver has accepted a property claim with respect to 69 of these units that relate to the Business Division Agreement entered into between A-1 and Crown Capital prior to the Receivership Proceedings and is in discussions with A-1 with respect to entitlement to the remaining 35 units.
14. In addition to the equipment fleet, at the Appointment Date, the Company’s other assets include reported accounts receivable and holdback accounts receivable of approximately \$10.5 million, the majority of which are aged greater than 90 days.
15. RBee owes approximately \$8.7 million plus accrued interest and legal costs to its senior secured first lien lender, Canadian Western Bank (“CWB”), and approximately \$22.7 million plus accrued interest and legal costs to its senior secured second lien lender, Crown Capital Partner Funding, LP (“Crown Capital” and together with CWB, the “**Secured Lenders**”). The Company also owes approximately \$3.0 million to Komatsu International (Canada) Inc. in respect of equipment financing facilities.
16. The Receiver has instructed Receiver’s Counsel to conduct an independent review of the validity and enforceability of the security held by CWB and Crown Capital over the Property and will report on the results of this review once complete.
17. The Company has reported unremitted employee source deductions due to Canada Revenue Agency (“CRA”) of approximately \$1.7 million which may represent a deemed trust claim against the Company in priority to the Secured Lenders.
18. As of the Appointment Date the Company reported \$7.7 million owed to unsecured creditors.

## RECEIVER'S ACTIVITIES

### Custody and Control

19. On the Appointment Date, the Receiver held a virtual meeting with two of the Company's management contractors to advise them that the Receivership Order had been granted and that the Receiver was taking possession of the Property in accordance with the terms of the Receivership Order. The Receiver also notified the Company's bank of its appointment and requested that all of the RBee's bank accounts be frozen.
20. On March 14, 2022, the Receiver attended the Company's head office in Gibbons, Alberta, to meet with the contractors and to secure the Company's book and records. The Receiver sent notices to the owners of each location where RBee assets were situated advising them of the Receivership Proceedings and that the equipment should not be removed without consent of the Receiver. A third-party contractor was retained to visit the various job sites and help facilitate the Solicitation Process.

### Statutory Notices

21. On March 18, 2022, the Receiver mailed the notice and statement of receiver in accordance with subsection 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* to the Superintendent of Bankruptcy and to all known creditors of the RBee.
22. The Receiver notified CRA of the Receiver's appointment and established new remittance accounts for the goods and sales tax and employee payroll deduction obligations arising subsequent to the Appointment Date.

## **Website and Receiver Contacts**

23. The Receiver established the Receiver's Website where it will post periodic updates on the progress of the Receivership Proceedings, along with copies of court orders, motion materials and reports filed in connection with these Receivership Proceedings and the Receiver's contact information to facilitate stakeholder inquiries.

## **Employees**

24. As at the Appointment Date the Company had four employees and two management contractors. The Receiver initially retained three employees, two of which were located at the Gibbons home office and were helping with equipment clean-up and maintenance, and one which was located at Site C. The two contractors were retained to assist the Receiver with its administration of the estate. All three of the retained employees were terminated as ongoing work was completed.
25. At the date of this report, the Receiver continues to retain the two management contractors, both of which continue to assist the Receiver with safeguarding assets, coordinating site visits, completing final invoicing/billings, attending to accounting matters, addressing CRA GST and Payroll audits, collecting accounts receivable and otherwise assisting the Receiver with administration of the estate.

## **Insurance**

26. The Receiver contacted the Company's insurance provider to amend the Company's existing insurance policies to reflect the Receiver's interest in the Property, to review the adequacy of the insurance and to confirm the status of the insurance coverage. The Receiver amended the Company's insurance policies to reflect that the Company's operations have effectively ceased at all locations and to remove the assets sold by RBee prior to the Receivership Proceedings.



## **Accounts Receivable and Revenue Contracts**

27. As of the Appointment Date the RBee had approximately \$10,520,000 in outstanding accounts receivable and holdback receivables. On March 15, 2022, the Receiver sent notices to all customers with outstanding balance, notifying them of the Receivership Proceedings and requesting payment of the outstanding amount owed to RBee. Certain of the accounts receivable are disputed by the customers and the Receiver is compiling diligence files to establish the validity and support the collectability of the accounts.
28. The Receiver has obtained and reviewed copies of the current sales contracts in place for Vogel, Windfall and Site C. On March 15, 2022, the Receiver scheduled meetings with key contacts for each of the sites to discuss their respective contracts. The Receiver and the Receiver's Counsel have had on going communications with representatives of the contracts for both Site C and Windfall to discuss, among other things, outstanding accounts receivable and timelines for the removal of RBee equipment from the project sites.

## **Solicitation Process**

29. The Receiver has conducted the Solicitation Process which has resulted in the Receiver entering into the Auction Services Agreement for the sale of all the RBees' equipment assets. Further details with respect to the Solicitation Process and the Auction Services Agreement are presented later in this First Report.

## **SUMMARY STATEMENT OF RECEIPTS AND DISBURSEMENTS**

30. The Receiver's cash receipts and disbursements for the period from the Appointment Date to April 22, 2022 are summarized as follows:

**Schedule of Receipts and Disbursements**  
**As at April 22, 2022**  
**\$ CAD**

<b>Receipts</b>	
Opening Cash	\$ 184,902
Accounts Receivable / Holdbacks	<u>1,381,855</u>
<b>Total - Receipts</b>	<b>1,566,757</b>
<b>Disbursements</b>	
Contractors	37,954
Payroll and Employee Related Obligations	31,162
Rent	145,935
Fuel	9,480
Utilities, Communications, Tech	5,895
GST / PST Paid	16,679
Bank Charges	111
Professional Fees	<u>127,040</u>
<b>Total - Disbursements</b>	<b>374,257</b>
<b>Net Cash on Hand</b>	<b><u><u>\$ 1,192,500</u></u></b>

- (a) Opening Cash – cash balance in RBees’ bank account at Appointment Date that was transferred to Receiver’s account;
- (b) Accounts Receivable / Holdbacks – amounts collected from customers related to outstanding accounts receivable and holdbacks accrued prior to the Receivership Proceedings;
- (c) Contractors – costs of management, security and other contractors retained by the Receiver;
- (d) Payroll and Employee Related Obligations – costs relating to employee wages, payroll remittances and benefits;
- (e) Rent – comprises rent paid related to all occupied, leased premises from which the Company is operating;

- (f) Fuel – costs incurred relating fuel required to power water pumps at the various asset locations to safeguard the assets;
  - (g) Utilities, Communications, Tech – costs incurred for utilities and services at the leased premises from which the RBee is operating;
  - (h) GST/PST Paid – relates to goods and services tax remittances; and
  - (i) Professional fees – relates to fees paid to the Receiver and the Receiver’s Counsel in respect of the Receivership Proceedings.
31. As at April 22, 2022, the Receiver is holding approximately \$1.2 million of cash on hand in the estate trust account.

## **SOLICITATION PROCESS**

32. The Receiver conducted the Solicitation Process to solicit offers to purchase its right, title and interest in approximately 376 pieces of heavy equipment in 6 locations.
33. Highlights of the Solicitation Process are as follows:
- (a) on March 14, 2022, the Receiver posted an “Invitation for Offers” to the Receiver’s website and sent it via email to approximately 212 potential bidders including strategic investors, financial investors and auction companies. Two industry publications were also notified of the Solicitation Process. A copy of the Invitation for Offers is attached as Appendix “A”;
  - (b) potential purchasers that contacted the Receiver were given access to an electronic data room which included asset listings, asset descriptions and photographs;
  - (c) site visits were coordinated for any parties wishing to physically inspect the assets;

- (d) parties that entered into a non-disclosure agreement with the Receiver were provided with details with respect to certain contracts historically performed by the Company;
  - (e) a deadline for submission of offers was set at April 6, 2022;
  - (f) 5 purchase offers and 6 auction proposals were received by the offer deadline for different parcels of assets; and
  - (g) 4 parties with the most favourable bids were given 48 hours to reconsider their proposals and submit an enhanced bid.
34. The Receiver, in consultation with the Secured Lenders, evaluated the bids with consideration to, among other things:
- (a) the proposed purchase prices and the offer or combination of offers that would result in the highest cumulative proceeds;
  - (b) the net minimum guarantees included in auction proposals;
  - (c) the fee structures included in auction proposals including commissions, buyers premiums, sharing thresholds, and cost deductions;
  - (d) the proposed sales approach in auction proposals including public auction and private sales strategies;
  - (e) the scope of assets being purchased;
  - (f) key dates including closing dates and length of time required at the current sites;
  - (g) closing risk and price risk including any remaining due diligence or other conditionality;

- (h) the extent to which the offer complied with the Solicitation Process; and
  - (i) the overall expected range of recoveries from the proposals.
35. Ultimately, the Receiver has selected the proposal for the Auction Services Agreement submitted by McDougall.
36. While the Auction Services Agreement encompasses all of the equipment assets of RBee, it provides the Receiver with the ability to remove certain parcels of assets from the Auction Services Agreement if the Receiver elects to complete a separate transaction that will enhance the overall recoveries to the estate.
37. Subsequent to entering into the Auction Services Agreement, the Receiver has received an *en bloc* offer for the Windfall, Vogel and Site C that, if successfully concluded, would result in increased sales proceeds and decreased costs as the proposed transaction contemplates that these standalone operations would remain in place. The Receiver expects to be back before the Court to seek approval of an additional offer with the support of affected stakeholders.

#### **AUCTION SERVICES AGREEMENT**

38. The Receiver is of the view that disclosure of the financial terms of the Auction Services Agreement may be detrimental to the realization process and has therefore prepared a Confidential Supplemental Report to the First Report to disclose the financial terms and provide an unredacted copy of the Auction Services Agreement.
39. The Receiver's high-level comments with respect to the Auction Services Agreement are as follows:
- (a) the Solicitation Process was fair and transparent and provided all participants with equal access to information and opportunity to submit an offer or proposal;

- (b) the net minimum guarantee provided by McDougall provides the highest guaranteed net proceeds to the Receiver with an opportunity for additional recoveries if auction proceeds are at the high end of the range of expected auction proceeds;
  - (c) the cost structure and other key terms of the Auction Services Agreement are commercially reasonable given the nature, locations and condition of the assets and based on the Receiver's experience with auctioneers and liquidators in the context of insolvency or restructuring proceedings;
  - (d) the Auction Services Agreement provides the Receiver with the ability to remove certain assets from the auction if a private transaction can be successfully concluded in respect of those assets that will enhance the overall recoveries of the estate;
  - (e) the Receiver is satisfied that McDougall has the requisite experience and is appropriately qualified to conduct the auction process contemplated by the Auction Services Agreement; and
  - (f) the Auction Services Agreement is supported by CWB and Crown Capital.
40. Overall, the Auction Services Agreement is the best proposal resulting from the Solicitation Process, will result in the monetization of the Property in a timely manner and will protect the downside risk to the Receiver while maintaining the potential for upside realizations. Accordingly, the Receiver is seeking the Approval and Vesting Order to approve the Auction Services Agreement and vest the assets in the auction purchaser(s), free and clear of any encumbrances.

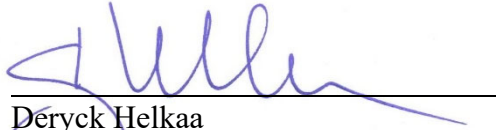
#### **RECEIVER'S RECOMMENDATIONS**

41. Based on the forgoing, the Receiver respectfully recommends that this Honourable Court grant the Approval and Vesting Order.

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All of which is respectfully submitted this 29<sup>th</sup> day of April, 2022.

FTI Consulting Canada Inc.  
in its capacity as receiver and manager of  
RBee Aggregate Consulting Ltd., and not  
in its personal or corporate capacity



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Deryck Helkaa  
Senior Managing Director



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Tom Powell  
Senior Managing Director

# APPENDIX “A”

Invitation for Offers



# RBee Aggregate

## Invitation for Offers to Purchase



### Background

On March 11, 2022, the Court of Queen’s Bench of Alberta (the “**Court**”) granted an Order (the “**Receivership Order**”) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager of all of the current and future assets, undertakings and properties of RBee Aggregate Consulting Ltd. (“**RBee**” or the “**Company**”).

FTI, in its capacity as receiver (the “**Receiver**”) of RBee is seeking offers to purchase the Receiver’s right, title and interest in certain of the Company’s assets which include aggregate processing and handling equipment located throughout Western Canada.

### Assets Available for Sale

RBee’s equipment fleet includes 380 pieces of heavy equipment which are summarized below:

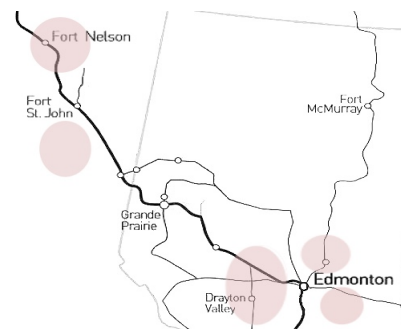
Assets by Location (units)	Parcel	Aggregate		Articulated	Wheel			Total
		Handling	Crushing	Dump Trucks	Loaders	Other		
Gibbons, Alberta	Shop / Home Office Yard	9	7	8	4	79	<b>107</b>	
Whitecourt, Alberta	Windfall Pit	51	5	6	3	30	<b>95</b>	
Fort St. John, British Columbia	Site C Pit	24	5	2	2	19	<b>52</b>	
Rocky Rapids & Drayton Valley, Alberta	Vogel Pit	28	3	-	3	18	<b>52</b>	
Other (3 locations)	Various	23	2	7	3	39	<b>74</b>	
<b>Total</b>		<b>135</b>	<b>22</b>	<b>23</b>	<b>15</b>	<b>185</b>	<b>380</b>	

The equipment is divided into five parcels which are further set out in the Receiver’s offer document.

### Strategic Locations

The equipment is strategically located to take advantage of the 2022 construction season and is situated in a manner ready to be deployed on key projects including:

- Site C Dam in Fort St. John, British Columbia
- Windfall Plant 3 in Whitecourt, Alberta
- Vogel Plant in Rocky Rapids, Alberta



## **Contract Opportunities**

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Certain of the equipment parcels available for sale have historically been deployed on contracts undertaken by RBee. The Receiver's interest in an applicable contract may be available for purchase and/or assignment in conjunction with an asset purchase. Details of current and/or historic contracts in respect of the equipment may be made available to qualified bidders at the sole discretion of the Receiver and upon execution of a non-disclosure agreement.

## **Offer Process**

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Qualified potential purchasers may be granted access to an electronic data room including due diligence materials and the Receiver's prescribed form of offer.

The timeline for the process is as follows:

- March 14 to April 6, 2022 – access to the electronic data room and appointments to inspect the equipment
- **April 6, 2022 – deadline for submitting offers (4 o'clock pm Mountain Standard Time)**
- April 6 to April 20, 2022 – Receiver will negotiate with one or more parties and seek Court approval of preferred offer(s)

Parties may bid on the prescribed parcels of equipment or make an en bloc offer for all of the equipment.

FTI reserves the right to amend or modify the solicitation process at any time at its sole discretion.

## **Contact Details**

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Inquiries or requests for information should be directed to FTI only and at the contact details below.

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