COURT FILE NUMBER

COURT

JUDICIAL CENTRE



2001 05482

COURT OF QUEEN'S BENCH OF CARR OF ALBERTA

CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

APPLICANT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT JMB CRUSHING SYSTEMS INC.

HAJDUK GIBBS LLP Barristers & Solicitors #202 Platinum Place 10120-118 Street NW Edmonton, AB T5K 1Y4 Attention: Richard B. Hajduk Ph: 780-428-4258 Fax: 780-425-9439 FILE: 5448 RBH

# ANSWERS TO UNDERTAKINGS OF BLAKE ELYEA given at Questioning on Affidavit conducted on November 24, 2020



JS Nov. 27 2020 Justice Eidsvik

Clerk's Stamp

COURT FILE NO.	2001-05482										
COURT	COURT OF QUEEN'S BENCH OF ALBERTA										
JUDICIAL CENTRE	CALGARY										
	IN THE MATTER OF THE <i>COMPANIES' CREDITORS</i> ARRANGEMENT ACT, RSC 1985, c C-36, as amended										
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DOCUMENT	ANSWERS TO UNDERTAKINGS FROM QUESTIONING OF BLAKE M. ELYEA ON NOVEMBER 24, 2020										
ADDRESS FOR SERVICE AND CONTACT	<b>GOWLING WLG (Canada) LLP</b> 1600, 421 – 7 <sup>th</sup> Avenue SW Calgary, AB T2P 4K9										
INFORMATION OF PARTY FILING THIS DOCUMENT	Attn:         Tom Cumming/Caireen E. Hanert/Stephen Kroeger           Phone:         403.298.1938/403.298.1992/403.298.1018           Fax:         403.263.9193           File No.:         A163514										
UNDERTAKING NO. 1:	Provide the Alberta Transportation specifications referred to in paragraph 20(a) of the Affidavit of Blake M. Elyea sworn November 20, 2020.										
Answer:	See attached Tab 1.										
UNDERTAKING NO. 2:	Provide the document in which the MD of Bonnyville described the product required as "Des 1 Class 12.5."										
Answer:	See attached Tab 2.										
UNDERTAKING NO. 3:	Point to where it says in the Alberta Transportation specifications document provided under Undertaking No. 1 that supports the statement that the product described as "modified Des 1 Class 12.5" provided to the MD in March and April 2020 was a "modified base course material." (taken under advisement)										
Answer:	This undertaking will be considered once we have received and reviewed the transcript.										

# UNDERTAKING NO. 4: Review the business records of JMB Crushing Systems Inc. ("JMB") to advise if an email dated April 29, 2020 at 3:00 PM from Tenille Paul to <u>jsshank2@shaw.ca</u> can be located within JMB's records with the text as set out in the attached.

- 2 -

Answer: A copy of the subject email was located on the JMB server.

# ANSWER TO UNDERTAKING #1

<u>Designations:</u> Designation 1 - Asphalt Concrete Pavement Designation 2 - Base Course Aggregate Designation 3 - Seal Coat Aggregate Designation 4 - Gravel Surfacing Aggregate Designation 5 - Sanding Material Designation 6 - Gravel Fill Designation 7 - Cement Stabilized Base Cou Designation 8 - Granular Filter Aggregate Designation 9 - Slurry Seal Aggregate	COEFFICIENT OF UNIFORMITY (CU)	FLAKINESS INDEX	L.A. ABRASION LOSS PERCENT MAX.	PLASTICITY INDEX (PI)	% FRACTURE BY WEIGHT (2 FACES)		Т				-	(CGSB 8-	Sieve 1		-1	Percent 2	2	4	5	œ	12	Class (mm)	DESIGNATION
n 1 - A n 2 - B n 3 - S n 4 - G n 5 - S n 6 - C n 7 - C	Cu)	DEX	Loss AX.	EX (PI)	ALL +5000	8			630	1	5 000	8 000	10 000	12 500	16 000	20 000	25 000	40 000	50 000	80 000	125 000		ž
<ul> <li>Asphalt Concrete Paveme</li> <li>Base Course Aggregate</li> <li>Seal Coat Aggregate</li> <li>Gravel Surfacing Aggrega</li> <li>Sanding Material</li> <li>Gravel Fill</li> <li>Cement Stabilized Base (</li> <li>Granular Filter Aggregate</li> <li>Slurry Seal Aggregate</li> </ul>			40	NP	.*		8-20	12-30		26-45	60-75		100								-	10	
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		and the second	50	NP-6	50+	2-10	5-18	8-26	12-34	17-43	32-62		44-74		55-85		70-94	100				40	
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* <u>Notes:</u> According to Specification 3.50, Asphalt Cor Superpave and Mix Type Specified. Designation 2 Class 16 Material is for ASBC For crushed aggregates other than all Desig percent in the amount passing the maximum passes the next larger standard sieve size. Unless otherwise specified, Pit-Run Aggreg specified gradation requirement, that is extra		<b>MAX 15</b>		1	-						0-15		5 55-75	100	1.4.13					5 m 1		12.5AW 12.5BW 12.5C	Second and
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* Notes: According to Specification 3.50, Asphalt Concrete Pavement - EPS or 3.53, Asphalt Concrete Paveme Superpave and Mix Type Specified. Designation 2 Class 16 Material is for ASBC For crushed aggregates other than all Designation 5 and Designation 9 materials, a tolerance of three percent in the amount passing the maximum size sieve will be permitted provided all oversize material passes the next larger standard sieve size. Unless otherwise specified, Pit-Run Aggregate will be defined as unprocessed granular material, wi specified gradation requirement, that is extracted from an aggregate deposit			NIA	NP-5	N/A					0-5	0-15		45-75	2	90-100		100					25	8
<ul> <li><u>* Notes:</u></li> <li><u>According to Specification 3.50, Asphalt Concrete Pavement - EPS or 3.53, Asphalt Concrete Pavement - Superpave and Mix Type Specified.</u></li> <li>Designation 2 Class 16 Material is for ASBC</li> <li>For crushed aggregates other than all Designation 5 and Designation 9 materials, a tolerance of three percent in the amount passing the maximum size sieve will be permitted provided all oversize material passes the next larger standard sieve size.</li> <li>Unless otherwise specified, Pit-Run Aggregate will be defined as unprocessed granular material, with no specified gradation requirement, that is extracted from an aggregate deposit</li> </ul>	NA		35	NP	NIA	5-15	10-21	18-30	30-50	45-75	85-100	100										~	9

AUGUST 2013

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Note 4 - Note 5 - Note 6-	Note 3 -	Note 2 -	Note 1 -		Т		Т		7	S3	S2	S1	Ξ	M1	H2	H		Mix Type		
				3.3 and 3.4 (L1 f 3.0				Des		25.0	10.0	10.0	12.5	12.5	12.5	16.0	1 Aggregate)	Top Size (mm) (Class for Des.	Agg	
Air Void limits listed in Note 3 shall be reduced by 0.5% for community airports. VMA at 3 300-400A asphalt is normally used for community airports All fines manufactured by the process of crushing shall be incorporated into the mix. Theoretical Film Thickness shall be as follows, depending on the specified Mix Type Thickness value shall be established in accordance with TLT-311. S1 requirement only for a surface course	The Design Air Voids shall be chosen as the lowest value, within the range of 3.5 to criteria are met.	Use the same number of blows as for the surface course or 50 blows if used as a surface	The Percentage of Manufactured Fines in the -5000 Portion of the Combined Aggregate.	(L1 for Community Airports only) 3.0, 3.1 and 3.2	3.5 and 3.6	3.7 and 3.8	4.0 and 3.9	Design Air Voids		Note 5	75	Note 5	Note 5	50	70	75		% MF. -5000 (min) Note 1	Aggregate Criteria	TABLE
hall be reduced sed for commun rocess of crush all be as follov ished in accord ce course	chosen as the	as for the surfa	d Fines in the -	virports only)						70	90	70	60	60	80	98 (one face) 90	(min)	% Fractures +5000 (2 faces)		3.50.3.2 ASPI
1 by 0.5% for co nity airports ing shall be incc ws, depending ance with TLT-:	e lowest value,	ace course or 50	-5000 Portion of					Mix	5	10 000	10 000	5 300	5 300	8 000	11 500	12 000		Marshall Stability N (min)		TABLE 3.50.3.2 ASPHALT CONCRETE MIX TYPES AND CHARACTERISTICS
mmunity airp orporated into on the speci 311.	within the ra	blows if use	the Combine	1 1	6.2	6.1	6.0	Mix Types H1, H2,	nimum Theo	75	75	Note 2	50	75	75	75		No. of Blows		E MIX TYPE
orts. VMA at : the mix. fied Mix Typ	nge of 3.5 to	d as a surface	d Aggregate.					2, M1	ratical Film -	2.0 to 4.0	2.0 to 3.5	2.0 to 4.0	2.0 to 4.0	2.0 to 3.5	2.0 to 3.5	2.0 to 3.5		Flow (mm)	Marshall Mi	S AND CHAR/
· · · · · · · · · · · · · · · · · · ·	N 1	e course.						In Types H1, H2, M1 Inckness Requirements (Juri)	Thickness Re	Note 3	Note 3	Note 3	Note 3, 4	Note 3	Note 3	Note 3		Air Voids (%)	lix Design Criteria	ACTERISTICS
Air Voids	/e, such th			6.9 6.8	6.	6.6	6.5	rvpe L1, S	niiremen	11.5	14.5	14.5	13.5	13.5	13.5	13.0	3.5	VMA % (min) % Air Voids	iteria	
a minimum	at all othe					0,		Mix Type L1, S2, S1 (note	te (iim)	12.0	15.0	15.0	14.0	14.0	14.0	13.5	4.0	VMA % (min) by % Air Voids		
0% Air Voids shall be a minimum of 13.0%. A and Design Air Voids. The Theoretical Film	<sup>,</sup> r mix design							97)		65-78	65-78	65-78	65-78	65-75	65-75	65-75	-	Voids Filled with Asphalt %		

AUGUST 2013

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# ANSWER TO UNDERTAKING #2

#4

# AMENDMENT TO AGREEMENT

This fourth amendment to the Agreement is made effective the 28 of February 2020.

### Between

Municipal District of Bonnyville No. 87 (hereinafter the "**MD**")

- and -

JMB Crushing System Inc. (hereinafter "**JMB**")

(MD and JMB collectively referred to herein as the "Parties")

**WHEREAS** the Parties entered into an agreement on November 1, 2013, for the production and supply of aggregate and subsequently entered into three amendments to the agreement as set-out below (the "Agreement");

**AND WHEREAS** the Parties agreed to the first amendment of the Agreement on September 30, 2015 (Amendment 1);

**AND WHEREAS** the Parties agreed to the second amendment of the Agreement on December 12, 2016 (Amendment 2);

**AND WHEREAS** the Parties agreed to the third amendment of the Agreement on February 26, 2018 (Amendment 3);

AND WHEREAS the Parties wish to amend certain terms of the Agreement;

**THEREFORE**, for the consideration of the promises and obligations under this Amendment 4, the sufficiency of which is hereby acknowledged as being good and valuable consideration, the Parties have reviewed and agreed upon the following terms and references in the Agreement being amended as follows:

#### PRODUCTS & SERVICES

Adding new 11.h:

- h. For the year 2020, the Product shall be as follows:
  - i. Modified Designation 1 Class 12.5mm in accordance with the following specifications in the table below from Alberta Transportation ("**Des 1 Class 12.5**"):

Page 1 of 4

DESIGNATION	1					
CLASS (MM)	12.5					
	12 500	100				
	10 000	83-92				
PERCENT	5000	55-70				
PASSING METRIC	1250	26-45				
SIEVE	630	18-38				
(CGSB 8-GP-2M)	315	12-30				
	160	8-20				
	80	4-20				
% FRACTURE BY ALL WE	EIGHT (2	60+				
FACES)						
(All +5000)	(All +5000)					
PLASITICITY INDEX	NP					
L.A. ABRASION LOSS PE	40					
MAXIMUM						

ii. Modified Designation 2 Class 16 mm in accordance with the following specifications in the table below from Alberta Transportation ("**Des 2 Class 16**"):

DESIGNATION		2
CLASS (MM)	16	
	1600	100
	12 500	89-100
DEBGENT	10 000	78-94
PERCENT PASSING METRIC	5000	55-70
SIEVE	1250	26-45
(CGSB 8-GP-2M)	630	18-38
(CGGB 0-GF-2M)	315	12-30
	160	8-20
	80	4-10
% FRACTURE BY ALL WE FACES)	EIGHT (2	60+
(All +5000)		
PLASITICITY INDEX	(PI)	NP
L.A. ABRASION LOSS PE MAXIMUM	RCENT	50

Adding new 11.i.:

i. For the year 2020, product specifications are as set out 11.h, or otherwise agreed to by the Parties in writing, and are generally

described as crushed gravel being Des 1 Class 12.5 and Des 2 Class 16.

Adding new 11.j:

j. Prior to May 15, 2020, JMB shall deliver both a minimum of 10,000 tonnes of Des 1 Class 12.5 and a minimum of 40,000 tonnes of Des 2 Class 16 to the MD pursuant to Section 12 of the Agreement.

Adding new 11.k:

k. For the year 2020, JMB shall deliver both a total of 50,000 tonnes of Des 1 Class 12.5 and a total of 150,000 tonnes of Des 2 Class 16 to the MD pursuant to Section 12 of the Agreement.

### **DELIVERY AND STOCKPILING**

Deleting 12 and substituting with:

12. JMB shall deliver the Product to 61330, Range Rd. 455, Bonnyville, T9N 2J7 (the "**MD Yard**"), and in cooperation with the MD staff, stockpile the Product in a continuous cone to a minimum height of 10 (ten) meters. JMB shall supply all equipment and labour for delivering and stockpiling the Product including trucks, a stacking conveyor(s), bulldozer(s) and any other equipment.

## **OWNERSHIP OF PRODUCT**

Deleting 14 and substituting with:

14. The MD will own the Product after the Product has been crushed and the MD has paid the related invoices issued pursuant to Section 19 of the Agreement. Any Product owned by the MD and in the possession of JMB shall be held in trust in the custody of JMB as bailee for the benefit of the MD in accordance with the provisions of the Agreement.

# PRICE

Adding new 16.1:

16.1 For the year 2020, the price for the Products and Services provided in accordance with the Agreement shall be \$33.28 per tonne for Des 1 Class 12.5 and \$31.00 per tonne for Des 2 Class 16.

### **INVOICING & SET-OFF**

Deleting 19 and substituting with:

19. When crushing is being done in a Year, JMB shall invoice the MD on a biweekly basis for 50% (fifty percent) of the applicable price per tonne of the Product which has been crushed and which will subsequently be delivered to the MD in the same Year. This payment will be based on the quantity verification by the MD.

Deleting 24 and substituting with:

24. At all times, the MD reserves the right to inspect the Product that has been invoiced by JMB, including without limitation, the right to verify the quantity and quality of the Product and the right to enter onto JMB's property to conduct an inspection of the Product. The MD is not required to pay for Product which does not meet the specifications and the permitted deviations from them in accordance with this Agreement.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this amendment and the Agreement or any earlier amendment, the terms of this Amendment will prevail.

JMB CRUSHING SYSTEMS Inc. PER:

MUNICIPAL DISTRICT OF BONNYVILLE NO. 87 PER:

eff Buck President

Luc Mercier, CAO

# ANSWER TO UNDERTAKING #4

From: Tenille Paul <<u>tenillemolloy@jmbcrush.com</u>> Date: April 29, 2020 at 2:59:45 PM MDT To: "jsshank2@shaw.ca" <jsshank2@shaw.ca> Cc: Jeff Ryks <jeffryks@jmbcrush.com>, Chad Miller <<u>chadmiller@jmbcrush.com</u>>, Jeff Buck <jeffb@jmbcrush.com> Subject: Shankowski Pit

Hey Jerry,

Further to your conversation with Jeff Ryks earlier please note the following:

- 2020 tonnages crushed:
  - 48,997 tonnes Designation 1 Class 12.5
  - 150,000 tonnes Designation 2 Class 16
  - All crushing was done for the MD of Bonnyville
- Elimination percentages were at an average of 40%. This would equal 79,598 tonnes of sand. Elimination was screened on ¼" (6mm)
- Grand total of pit run was 278,595 tonnes
- We had a pile of approximately 7,000 tonnes of 40mm gravel that was re processed into Designation 2 Class 16

Any questions on this please let us know.

Thanks, Tenille