

JS
Nov. 27 2020
Justice Eidsvik

COURT FILE NUMBER

2001 05482

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

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

JMB CRUSHING SYSTEMS INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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

COURT FILE NO. 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

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

DOCUMENT **ANSWERS TO UNDERTAKINGS FROM QUESTIONING
OF BLAKE M. ELYEA ON NOVEMBER 24, 2020**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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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 jsshank2@shaw.ca can be located within JMB’s records with the text as set out in the attached.

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

ANSWER TO UNDERTAKING #1

TABLE 3.2.3.1, SPECIFICATIONS FOR AGGREGATE

DESIGNATION	1				2				3				4				5		6		7	8	9
	10	12.5	16	25	*16(N)2	20	25	40	12.5AW	12.5BW	12.5C	16	20	25	40	10A	10B	80	125	40	25	8	
Class (mm)																							
125 000																							
80 000																		100	100				
50 000																		55-100	55-100				
40 000																		38-100	38-100				
25 000																							
Percent Passing																							
Metric Sieve																							
12 500	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	32-85	32-85				
10 000	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100						
(CGSB 8-GP-2M) • m																							
5 000	60-75	55-70	50-65	40-58	55-70	40-67	35-64	32-62	0-15	0-15	30-60	27-54	15-55	15-55	8-55	70-90	45-70	20-65	20-65				
1 250	26-45	26-45	26-45	25-44	26-45	20-43	18-43	17-43	0-3	0-3	9-28	9-28	0-30	0-30	0-30	20-45	20-45						
630	18-38	18-38	18-38	16-36	18-38	14-34	12-34	12-34															
315	12-30	12-30	12-30	10-28	12-30	9-26	8-26	8-26															
160	8-20	8-20	8-20	6-18	8-20	5-18	5-18	5-18															
80	4-10	4-10	4-10	4-10	4-10	2-10	2-10	2-10	0-0.3	0-0.3	0-11	0-11	0-12	0-12	0-12	0-10	0-10	2-10	2-15	6-30	6-30	17-100	10-21
% FRACTURE BY WEIGHT (2 FACES)	*See Note (N1)																						
ALL +5000	60+																						
PLASTICITY INDEX (PI)	NP	NP	NP	NP	NP	NP-6	NP-6	NP-6	NP-4	NP-4	NP-4	NP-4	NP-8	NP-8	NP-8	NP-6	NP-6	NP-8	NP-8	NP-5	NP-5	NP	
L.A. ABRASION LOSS PERCENT MAX.	40	40	40	40	50	50	50	50	35	35	35	35	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
FLAKINESS INDEX	N/A																						
COEFFICIENT OF UNIFORMITY (CU)	N/A																						

Designations:

- N1. According to Specification 3.50, Asphalt Concrete Pavement - EPS or 3.53, Asphalt Concrete Pavement - Superpave and Mix Type Specified.
- N2. Designation 2 Class 16 Material is for ASBC
- N3. 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.
- N4. 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

* Notes:

N/A

TABLE 3.50.3.2 ASPHALT CONCRETE MIX TYPES AND CHARACTERISTICS

Mix Type	Aggregate Criteria			Marshall Mix Design Criteria					Voids Filled with Asphalt %	
	Top Size (mm) (Class for Des. 1 Aggregate)	% MF. -5000 (min) Note 1	% Fractures +5000 (2 faces) (min)	Marshall Stability N (min)	No. of Blows	Flow (mm)	Air Voids (%)	VMA % (min) by % Air Voids		
H1	16.0	75	98 (one face) 90	12 000	75	2.0 to 3.5	Note 3	13.0	13.5	65-75
H2	12.5	70	80	11 500	75	2.0 to 3.5	Note 3	13.5	14.0	65-75
M1	12.5	50	60	8 000	75	2.0 to 3.5	Note 3	13.5	14.0	65-75
L1	12.5	Note 5	60	5 300	50	2.0 to 4.0	Note 3, 4	13.5	14.0	65-78
S1	10.0	Note 5	70	5 300	Note 2	2.0 to 4.0	Note 3	14.5	15.0	65-78
S2	10.0	75	90	10 000	75	2.0 to 3.5	Note 3	14.5	15.0	65-78
S3	25.0	Note 5	70	10 000	75	2.0 to 4.0	Note 3	11.5	12.0	65-78

Design Air Voids	Minimum Theoretical Film Thickness Requirements (µm)	
	Mix Types H1, H2, M1	Mix Type L1, S2, S1 (note 7)
4.0 and 3.9	6.0	6.5
3.7 and 3.8	6.1	6.6
3.5 and 3.6	6.2	6.7
3.3 and 3.4 (L1 for Community Airports only) 3.0, 3.1 and 3.2	-	6.8 6.9

- Note 1 - The Percentage of Manufactured Fines in the -5000 Portion of the Combined Aggregate.
- Note 2 - Use the same number of blows as for the surface course or 50 blows if used as a surface course.
- Note 3 - The Design Air Voids shall be chosen as the lowest value, within the range of 3.5 to 4.0% inclusive, such that all other mix design criteria are met.
- Note 4 - Air Void limits listed in Note 3 shall be reduced by 0.5% for community airports. VMA at 3.0% Air Voids shall be a minimum of 13.0%. A 300-400A asphalt is normally used for community airports
- Note 5 - All fines manufactured by the process of crushing shall be incorporated into the mix.
- Note 6 - Theoretical Film Thickness shall be as follows, depending on the specified Mix Type and Design Air Voids. The Theoretical Film Thickness value shall be established in accordance with TLT-311.
- Note 7 - S1 requirement only for a surface course

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**"):

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

- 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
PERCENT PASSING METRIC SIEVE (CGSB 8-GP-2M)	1600	100
	12 500	89-100
	10 000	78-94
	5000	55-70
	1250	26-45
	630	18-38
	315	12-30
	160	8-20
	80	4-10
% FRACTURE BY ALL WEIGHT (2 FACES) (All +5000)		60+
PLASITICITY INDEX (PI)		NP
L.A. ABRASION LOSS PERCENT MAXIMUM		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:

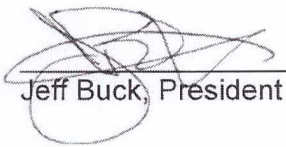
19. When crushing is being done in a Year, JMB shall invoice the MD on a bi-weekly basis for 50% (fifty percent) of the applicable price per tonne of the Product which has been crushed and which will subsequently be delivered to the MD in the same Year. This payment will be based on the quantity verification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

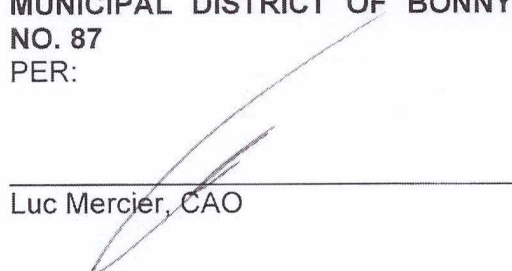
Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this amendment and the Agreement or any earlier amendment, the terms of this Amendment will prevail.

JMB CRUSHING SYSTEMS Inc.
PER:



Jeff Buck, President

**MUNICIPAL DISTRICT OF BONNYVILLE
NO. 87**
PER:



Luc Mercier, CAO

ANSWER TO UNDERTAKING #4

From: Tenille Paul <tenillemolloy@jmbcrush.com>

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 <chadmiller@jmbcrush.com>, 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