

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

REGISTRAR - *Master Sean*

)  
)  
)

TUESDAY, THE 5<sup>th</sup>

DAY OF FEBRUARY, 2019



IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHN  
OF THE PROVINCE OF ONTARIO

**ORDER APPROVING PROPOSAL**

UPON THE APPLICATION of MNP Ltd., trustee (the "Trustee") in re the Proposal of Markdale Aggregates Inc., filed on December 11, 2018, and upon reading the Report of the Trustee on Proposal, dated January 10, 2019; and upon hearing submissions of the Trustee; and the Court being satisfied that the required majority of creditors duly accepted the Amended Proposal dated December 21, 2018 (the "Amended Proposal") and the terms thereof, a complete copy of which is marked as Schedule "A" and annexed hereto, and being satisfied that the said terms are reasonable and calculated to the benefit of the general body of creditors and that no offences or facts have been proved to justify the Court in withholding its approval:

1. **THIS COURT ORDERS** that the Amended Proposal be and is hereby approved.

*subject to the requirement that the funds paid for the fees and disbursements of the Administration shall be included as receipts in the estate.*

Registrar

*[Signature]*  
Master Sean

**SCHEDULE "A"**

**AMENDED PROPOSAL OF MARKDALE AGGREGATES INC.**

*(see attached)*

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN;  
IN THE PROVINCE OF ONTARIO

AMENDED PROPOSAL OF MARKDALE AGGREGATES INC.

Markdale Aggregates Inc. hereby submits the following Amended Proposal to its Unsecured Creditors pursuant to Part III of the BIA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) "Administrative Fees and Expenses" means:
  - (i) the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, its legal fees and disbursements; and
  - (ii) the legal fees and disbursements of the Debtor on and incidental to negotiations in connection with the approval of the Proposal, court proceedings relating to the Proposal and the transactions and agreements contemplated hereby, including, without limitation, advice to the Debtor.
- (b) "Approval Order" means an Order of the Court approving the Proposal;
- (c) "BIA" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (d) "Business Day" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) "*Canada Pension Plan*" means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (f) "Claim" means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date,

whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date;

- (g) "Court" means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (h) "Creditor" means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (i) "Creditors' Meeting" means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (j) "Creditors' Meeting Date" means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
- (k) "Debtor" means Markdale Aggregates Inc.;
- (l) "Directors" means the Debtor's current and past directors;
- (m) "Employee Creditors" means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under **paragraph 136(l)(d)** of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor's business during the same period;
- (n) "*Employment Insurance Act*" means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (o) "Implementation Date" means the date upon which the conditions set forth in **Article [7.4]** have been satisfied;
- (p) "*Income Tax Act*" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended;
- (q) "Inspectors" means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;



- (r) "Official Receiver" shall have the meaning ascribed thereto in the BIA;
- (s) "Person" means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (t) "Preferred Creditors" means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
- (u) "Proof of Claim" shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors' Meeting;
- (v) "Proposal" means this proposal together with any amendments or additions thereto;
- (w) "Proposal Date" means the date of the filing of the Proposal with the Official Receiver;
- (x) "Proposal Proceeds" mean the funds contributed in accordance with Article [5.1];
- (y) "Proven Claim" of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (z) "Related Creditor" means Tiber Markdale Resources Inc. the parent company to the Debtor;
- (aa) "Secured Creditor" means any Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim, and "Secured Creditors" means all of them;
- (bb) "Source Deduction Creditors" means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
  - (i) subsection 224(1.2) of the *Income Tax Act*;
  - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
  - (iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that



subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;

- (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
  - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- (cc) "Trustee" means MNP Ltd. or its duly appointed successor or successors;
- (dd) "Unsecured Creditors" means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (ee) "Voting Letter" shall mean the voting letter required by subsection 51(1) of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors' Meeting.

## 1.2 Articles of Reference

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## 1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## 1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

## 1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is



unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

#### **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

#### **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

#### **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

#### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **ARTICLE 2**

#### **CLASSIFICATION AND TREATMENT OF CREDITOR**

##### **2.1 Classes of Creditors**

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

##### **2.2 Secured Creditor**

The Claim of each Secured Creditor shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal or the Proposal proceedings commenced by the Debtor under the BIA.

##### **2.3 Administrative Fees and Expenses**

The Administrative Fees and Expenses shall be paid by retainers paid by the Debtor or the Related Creditor to the Trustee and will not be paid from the Proposal Proceeds.



#### **2.4 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

#### **2.5 Unsecured Creditors**

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors, will be satisfied or paid as provided by Article [6].

#### **2.6 Related Creditor**

The Related Creditor, as a Secured Creditor, shall receive no dividend under this Proposal.

### **ARTICLE 3**

#### **PROCEDURE FOR VALIDATION OF CLAIMS**

##### **3.1 Filing of Proofs of Claim**

Each Unsecured Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

##### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

##### **3.3 Delivery of section 149 Notice**

Immediately after the Implementation Date, the Trustee will deliver notices as provided by section 149 of the BIA.

### **ARTICLE 4**

#### **MEETING OF CREDITORS**

##### **4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.





#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meetings**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meetings**

The Creditors' Meeting may be adjourned in accordance with **section 52** of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount that is equal to that Unsecured Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with **subsection 108(3)** of the BIA. The Related Creditor will not be entitled to vote at the Creditors' Meeting.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by each class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

#### **4.7 Appointment of Inspectors**

At the Meeting of Creditors, the Unsecured Creditors may appoint up to **five (5)** Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.



## ARTICLE 5

### FUNDING OF PROPOSAL

#### 5.1 Funding of Proposal.

Within five days of the Implementation Date the Debtor will pay \$75,000 (the "Proposal Proceeds") to the Trustee to be distributed in accordance with Article [6].

## ARTICLE 6

### DISTRIBUTION

#### 6.1 Distribution

The Proposal Proceeds shall be distributed by the Trustee as soon practicably possible, but in any event within six (6) months of the Implementation Date, as follows:

- (a) First, to payment of Source Deduction Creditors, if any;
- (b) Second, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
- (c) Third, to payment of the Claims, if any, of the Employee Creditors;
- (d) Fourth, to payment of all Claims of any other Preferred Creditors, if any, in the priority set out in section 136 of the BIA;
- (e) Fifth, the ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

#### 6.2 Levy

Payments to each Unsecured Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

#### 6.3 Discharge of Trustee

Upon the payment by the Trustee of the amounts contemplated in this Article [6] the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.

## ARTICLE 7

### MISCELLANEOUS

#### 7.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in section 50(14) of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

#### 7.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### 7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or

unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **7.4 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The acceptance of the Proposal by the Unsecured Creditors;
- (b) The making of the Approval Order and the expiry of all appeal periods; and,
- (c) That the Unsecured Creditors Claim of APS Aggregate Services Inc. be valued at \$395,906.41 for the purposes of distribution under Article 6.

#### **7.5 Full Implementation**

This Proposal will be fully implemented by the Debtor on payment of the Proposal Proceeds as provided by Article [5.1] and the payment of the Administrative Fees and Disbursements.

#### **7.6 Effect of Proposal Generally**

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

#### **7.7 Conduct of Debtor's Business**

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.



## ARTICLE 8

### ADVOIDANCE OF TRANSACTION

#### 8.1 Avoidance Proceedings

Sections 95 to 101 of the BIA will not apply in respect of the Debtor or this Proposal.

## ARTICLE 9

### GENERAL

#### 9.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

**Markdale Aggregates Inc.**  
111 Creditstone Road  
Vaughan, ON L4K 1N3  
**Attention: Louie Frustaglio**  
E-mail : lfrustaglio@arggroup.com

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

- (c) if to the Trustee:

**MNP Ltd.**  
300-111 Richmond St W  
Toronto, ON M5H 2G4

**Attention: Sheldon Title**  
Telecopier: 416-596-7894  
E-mail : sheldon.title@mnp.ca

Or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which



interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in the case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

## **9.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

## **9.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **9.4 Non-Severability**

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

## **9.5 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.


**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**



**EXECUTION PAGE**

DATED at Vaughan, Ontario this 21st day of December, 2018.

**Markdale Aggregates Inc.**

Per:   
Name: LOUIS FRASTAGLIO  
Title: PRESIDENT

I have authority to bind the corporation.

IN THE MATTER OF THE PROPOSAL OF MARKDALE AGGREGATES INC. OF THE CITY OF VAUGHN OF THE PROVINCE OF ONTARIO

---

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at Toronto

---

**ORDER APPROVAL PROPOSAL**

---

**LOOPSTRA NIXON LLP**

Barristers and Solicitors  
135 Queens Plate Drive, Suite 600  
Toronto, Ontario  
M9W 6V7

**R. Graham Phoenix (52650N)**

**Thomas P. Lambert (70354T)**

Tel: 416.746.4710

Fax: 416.746.8319

Email: [gphoenix@loonix.com](mailto:gphoenix@loonix.com)

[tlambert@loonix.com](mailto:tlambert@loonix.com)

*Lawyers for MNP Ltd., the Proposal Trustee*