



City of Hamilton

AUDIT, FINANCE AND ADMINISTRATION COMMITTEE ADDENDUM

Meeting #: 21-019

Date: November 4, 2021

Time: 9:30 a.m.

Location: Due to the COVID-19 and the Closure of City Hall (CC)

All electronic meetings can be viewed at:

City's Website:

<https://www.hamilton.ca/council-committee/council-committee-meetings/meetings-and-agendas>

City's YouTube Channel:

<https://www.youtube.com/user/InsideCityofHamilton> or Cable 14

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

5. COMMUNICATIONS

- *5.2. Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd.

Recommendation: Be received and referred to consideration of Item 6.1.

- *5.3. Correspondence from Stan Capobianco, President, Associated Paving & Materials Ltd, respecting the commercial relationship between the City and Associated Paving & Materials Ltd.

Recommendation: Be received and referred to consideration of Item 6.1.

6. DELEGATION REQUESTS

- *6.1. Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving & Materials Ltd., respecting the commercial relationship between the City and Associated Paving (For today's meeting)

- *6.2. Max Warmuth, Garda Canada Security Corporation "GardaWorld", respecting the Commercial relationship between the City of Hamilton and Garda (For today's meeting)

10. DISCUSSION ITEMS

- *10.2. Procurement Sub-Committee Report 21-001 - October 29, 2021



DLA Piper (Canada) LLP
 Suite 6000, 1 First Canadian Place
 PO Box 367, 100 King St W
 Toronto ON M5X 1E2
 www.dlapiper.com

Howard D. Krupat
 howard.krupat@dlapiper.com
T +1 416.365.3510
F +1 416.777.7421

November 3, 2021

FILE NUMBER: 108318-00001

DELIVERED BY EMAIL

Office of the City Clerk
 City Hall, City of Hamilton
 71 Main St. W., 1st Floor
 Hamilton, ON L8P 4Y5
 clerk@hamilton.ca

Dear Sirs/Mesdames:

**Re: Associated Paving & Materials Ltd. (“Associated Paving”)
 Contract C15-71-17 - Prequalified Contractors for Permanent Restoration of Pavement
 Cuts in Asphalt and Concrete Pavements
 Recommendation Letter of City of Hamilton Manager of Procurement Dated October 19,
 2021 Pertaining to Commercial Relationship with Associated Paving (“Recommendation
 Letter”)
 City’s Procurement Sub-Committee Meeting on October 29, 2021 (“Procurement
 Sub-Committee Meeting”)
 Audit, Finance & Administration Committee (“AFAC”) Meeting on November 4, 2021
 (“AFAC Committee Meeting”)
 Submission for Delegation**

As you know, we are counsel for APM in the above matter. In that capacity, we appeared on behalf of our client at the Procurement Sub-Committee Meeting on October 29, 2021.

It is our understanding from the comments of Councillor Ferguson at the Procurement Sub-Committee Meeting and my email exchange of October 29, 2021 with Ms. Angela McRae, the Legislative Coordinator of the Office of the City Clerk, that the issues raised in the Recommendation Letter have now been referred to the AFAC for its consideration at the AFAC Committee Meeting on November 4, 2021.

I confirm that we have submitted a delegation request for the AFAC Committee Meeting. We request that this letter be included with our delegation materials. Kindly also include our prior letters dated October 27, 2021 and October 28, 2021, as previously submitted to the Procurement Sub-Committee. An additional letter directly from APM will follow.

It is our further understanding that decisions were taken with respect to APM’s interests on an *in camera* basis at the Procurement Sub-Committee meeting and that those decisions were made upon the basis of a confidential report, together with feedback from City staff and Councillors that has not been disclosed to APM.



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The released language for the decisions made by the Procurement Sub-Committee pertaining to our client's interests is as follows:

Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. (FCS21102 / LS21044 / PW21064) (City Wide) (Item 14.2)

- (a) That the direction provided to staff in Closed Session, be approved;
- (b) That Closed Session recommendations be released publicly following approval by Council; and,
- (c) That the contents of Report FCS21102 / LS21044 / PW21064, Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. and the attached Appendix remain confidential.

Based upon this wording and the confidential nature of the information and materials relied upon, APM is unable to determine the substance of what was decided with respect to its own commercial interests and, therefore, the nature of the matter that will come before the AFAC. APM is also not in a position to know or respond to whatever information or documents were provided by City staff to the Procurement Sub-Committee.

In the circumstances, and in the interest of due process and fairness, we request that you please provide us, in advance of the AFAC Committee Meeting, with a copy of: (i) all materials submitted to the Procurement Sub-Committee and the AFAC Committee relating to APM, including all materials that are considered to be "confidential"; (ii) the full particulars of all City staff and Councillor recommendations and communications pertaining to APM; and (iii) the full particulars of all decisions and recommendations issued by the Procurement Sub-Committee relating to APM.

Thank you in advance for your consideration of this matter.

Sincerely,
DLA Piper (Canada) LLP
Per:

A handwritten signature in blue ink, appearing to read 'H. Krupat', with a long horizontal line extending to the right.

Howard D. Krupat

HDK:

c: Roger Campbell
Marco Capobianco
Stan Capobianco



November 3, 2021

DELIVERED BY EMAIL

Office of the City Clerk
City Hall, City of Hamilton
71 Main St. W., 1st Floor
Hamilton, ON L8P 4Y5
clerk@hamilton.ca

Dear Sirs/Mesdames:

Re: Associated Paving & Materials Ltd. (“Associated Paving”)
Contract C15-71-17 - Prequalified Contractors for Permanent Restoration of Pavement
Cuts in Asphalt and Concrete Pavements
Recommendation Letter of City of Hamilton Manager of Procurement Dated October 19,
2021 Pertaining to Commercial Relationship with Associated Paving (“Recommendation
Letter”) --- City’s Procurement Sub-Committee Meeting on October 29, 2021
 (“Procurement Sub-Committee Meeting”) -- Audit, Finance & Administration
Committee (“AFAC”) Meeting on November 4, 2021 (“AFAC Committee Meeting”)
Submission for Delegation

We are respectfully asking that the Audit & Finance Administration Committee and City
Council not impose a ban upon Associated Paving & Materials Ltd. (APM) from bidding
on or entering into the contract for *Contract Number C15-32-21 (H) Permanent
Restoration of Pavement Cuts in Asphalt and Contract Pavements* (the “2021 Road Cuts
Contract”) which was recently put out by the City for tender.

We appeared with legal counsel before the Procurement Sub-Committee about this on
October 29th. We do not know what the Sub-Committee decided. We were told by the
Clerk’s Department that the Sub-Committee made some recommendation, but that they
are not permitted to tell us what the Procurement Sub-Committee has recommended.

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Who is Associated Paving & Materials Ltd. (APM)?

The APM group of companies are family-owned and have operated for more than 50 years. APM has its head office in Burlington, where its asphalt plant is located.

APM has a long relationship with the City, over many years and many contracts.

Our organization also has invested in the City of Hamilton, having acquired and done substantial clean-up remediation of a property with a substantial building on Lottridge Road. We acquired the property in 2017 and made extensive modifications to the building and added facilities so that we could more effectively perform contracts with the City, especially the road cuts restoration contracts which APM has performed for almost 8 years.

We very much value our relationship with the City.

What is Involved in Road Cuts Restoration?

Restoration of utility cuts typically involves hard surface (asphalt, concrete) restoration and soft surface (sod, interlock) restoration, which has to be done in a sequence of concrete, followed by paving, followed by soft surface. Some restorations can involve substantial work.

The City has posted on *YouTube* (at <https://youtu.be/sANzanuweMo>) an “*Inside City of Hamilton*” video which describes the road cut restoration process. In that video, it is stated that one of the major complaints of citizens about road cuts is about restoration of the sod, but that unfortunately sod can generally only be laid in spring and the fall.

The 2014 & 2017 Road Cuts Contracts and City Commendations of APM

In 2014, APM was the successful bidder for the City’s Annual Restoration of Utility Cuts contract. The contract was to be for one year, extendable for one-year periods up to 4 years at the option of the City. The City was sufficiently satisfied with APM’s performance that the City exercised its option to extend the contract each year successively, for a total of four years, through 2017.

In an April 9, 2015 letter from the City which we proudly display in our offices reception area, APM was advised by the City that our performance on the 2014 Road Cuts Contract and the dedication of our people were exceptional, that “*[our] group is now setting the bar to which others were not able to achieve*” and we had “*shown that [we] are more than capable to managing this project*”.

In 2017, APM was again the successful bidder for the City's *Permanent Restoration of Pavement Cuts* contract, after having been prequalified by the City. Again, the term was for one year, extendable successively at the City's option by one year for up to four years. Again, the City was sufficiently satisfied with APM's performance that it successively exercised its option to extend the term of the contract three times, extending to November 30, 2021.

Again, we received written commendations of our performance:

- First, in a June 28, 2018 in an email from the City's Project Manager, commending the performance an APM project manager and describing the program was in the "*best state the program has been in*" since the author of the email had been managing the contract.
- Second, in a July 15, 2020 email from the City's Project Manager – Restorations. during 2020, which described 2020 as being a "challenging year" due to the City's switch to the new Cityworks project management software and the ongoing Covid-19 pandemic. The email commended the same APM project who had been commended in 2020 (and is still APM's Project Manager for the road cuts contract) on his commitment, constant communications and assistance in the rolling out of Cityworks. The email stated:

As you are aware this contract is a challenging one with aspects, and scheduling requirements, not often seen under other programs of a similar scope. Working on thousands of locations per year requires considerable attention to detail, and organization, which is fundamental to ensuring the program is delivered efficiently. Over the past year [APM's project manager's name] consistent focus on these skills has allowed him to effectively manage and improve the road cuts program.

The City Has Already Prequalified APM for the 2021 Road Cuts Contract

This Committee may not know that what City staff are now recommending is that APM be banned from bidding on a contract for which APM was very recently prequalified by the City.

APM is one of only 5 companies which have been prequalified by the City to bid on the *2021 Road Cuts Contract*. If APM is banned from bidding on that contract, there will be a maximum of only 4 bidders for the contract.

We submitted our bid for prequalification for the *2021 Road Cuts Contract* in early August of this year. It is important to note that the prequalification process was rigorous and comprehensive.

Over a period of two months, an "*Evaluation Team*" comprised of City staff and City consultants evaluated the following criteria:

- the construction equipment we would dedicate or use for the project;
- our material supplies, including our asphalt/concrete plant and our topsoil/sod suppliers;
- our senior office and field staff experience;
- our experience with the last 5 years in successfully completing municipal road restoration projects of similar scope and complexity, *including the road cuts restoration contracts we have performed for the City of Hamilton*;
- *Project Management*, specifically our “*proposed methodology to complete the permanent restoration of approx. 360 cut locations, including road/sidewalk/sod, in a six week period*”;

On October 8th, we were advised of the “unofficial” results of the City’s prequalification process --- APM had been prequalified for the *2021 Road Cuts Contract*.

The Series of Events Following Notification of APM Having Been Prequalified

Following notification on October 8th that APM had been prequalified to bid on the *2021 Road Cuts Contract*, a series of perplexing events has occurred.

One week later, on October 15th, we were surprised to be advised in a letter that the City was “*contemplating a vendor ban against [APM] for Permanent Restoration of Pavement Cuts in Asphalt and Concrete Pavement Work*” --- the same contract for which APM had just been prequalified by the City.

Two business days later, on October 19th, we received a letter from the City’s Manager of Procurement advising that since APM had been awarded the 2017 Road Cuts Contract “*and more specifically since November 19, 2020, City staff has experienced some vendor performance issues with Associated Paving on the [2017 Road Cuts Restoration Contract]*” and that “*it is the view of City staff that the commercial relationship between the City and Associated Paving has been impaired*”. The October 19th letter further advised that a “*staff report*” would be considered by the City’s Procurement Sub-Committee on October 29th and:

“... staff will report to Procurement Sub-Committee with a recommendation that it not accept any bids nor enter into any contracts with Associated Paving, or any of its related corporate or individual entities, for road cut restoration work for a period of time to be determined by Procurement Sub-Committee”.

The October 19th letter further advised that the staff report was a “*confidential report*” and would be considered by Procurement Sub-Committee in closed session, which we would not be able to attend. The letter went on to state:

“In the meantime, should you choose to submit bids on City projects, please note that such bids may ultimately be rejected.”

On October 25th, the prequalification of APM for the *2021 Road Cuts Contract* was made official.

On October 27th, the Request for Tenders package for the *2021 Road Cuts Contract* was made provided to APM. The Request for Tenders states: “*Bidders eligible to submit Bids for this Request for Tender have been previously prequalified under Project Number C14-12-21*” and stated that APM was one of the bidders which had been prequalified to bid. The Tender package stated that it closed on November 10th.

APM’s Attempts to Obtain Fairness in the Process

Being barred from bidding will have serious implications for APM. We are entitled to fair consideration and a fair process.

That City staff have now initiated this process seems particularly unfair to us. We have just been through a rigorous process of preparing a submission as to our capability to perform the *2021 Road Cuts Contract* and as to our performance on previous road cuts contracts. After extensive review, the City’s Evaluation Team decided to prequalify us to bid on the contract. Now we have to again make submissions as to why we should be permitted to bid on the contract, this time in a public process, in which anything we choose to submit to convince Committees and the Council will be made public for review by our competitors.

The October 19th letter from the Manager of Procurement states that the City’s staff report as to why the staff is recommending that we be banned from bidding is to be kept confidential from us. We do not know what is stated in that staff report and whether it is fair and accurate as to what has occurred.

The October 19th letter states that the City issued to us “*a number of Policy #8 Vendor Performance reports and one Vendor Performance – Incident Reporting Forms*”. In fact, the only report we received an August 17, 2021 Vendor Performance – Incident Report form, which is the only such report we have ever received from City on any contract. On October 22nd, we asked that the Manager of Procurement provide to us all of the reports which the October 19th letter said had been issued to us.

At the end of day on Tuesday, October 26th, we received extensive documents from the City which are supposed to provide the basis for banning APM from bidding due to impairment of its commercial relationship with the City. Many of the documents had not previously been provided to us. We do not know which, if any, of those documents were provided to the Procurement Sub-Committee or have been provided to this Committee.

Legal counsel we have engaged wrote to the City emphasizing that we are entitled to fairness and full disclosure by the City and advising that we were requesting that the Procurement Sub-Committee defer consideration of this matter until we had received disclosure and an opportunity to prepare our submissions.

On October 29th, we appeared with our legal counsel before the Procurement Sub-Committee. We requested deferment by the Sub-Committee and advised that if the Sub-Committee would not grant deferment, we wished to make submissions as to why the ban ought not to be imposed. The Sub-Committee went into closed session and apparently conferred with City staff in closed session. We were then advised of what the Sub-Committee determined, which did not disclose what the Sub-Committee had actually

determined. Our legal counsel asked the Clerk's office, but was told that they were not permitted to tell us what the Sub-Committee had determined and that the City staff report would remain confidential from us.

Our legal counsel has today again requested full disclosure and that we be told what the Procurement Sub-Committee decided on October 29th.

What Happened in 2020 – 2021?

The October 19th letter from the City's Manager of Procurement makes general statements about issues relating to APM's performance on the 2017 Road Cuts Contract, but is specific that the issues have been experienced since November 19, 2020.

As stated above, we had been commended by the City for our performance on the 2017 Road Cuts Contract (and on the 2014 Road Cuts Contract), most recently only a little more than a year ago and less than 4 months prior to November 19, 2020.

So, what happened in 2020 – 2021?

As was noted by the City's Project Manager – Restorations in his July 15, 2020 email, 2020 was a particularly challenging year. This was not only due to the Covid-19 pandemic ongoing (and it still is), the City required that APM change its procedures and utilize the Cityworks program, which had not been a requirement under APM's contract with the City (but we note that this has been added as a requirement of contractors for the *2021 Road Cuts Contract* which is currently out for tender).

On top of those challenges, the quantities of restoration work which the City asked APM to perform escalated to being almost double the quantities the City had estimated and had been stated in APM's contract with the City. We have been told by the that they have no control as to the volume of restoration needed and that the City had not anticipated that the estimated quantities would be exceeded to the extent that they have. We also had not anticipated that.

The City's 2017 Tender package states and the Contract also states, in section 6:

Construction Schedule

The Contractor will be required under this Contract to **supply sufficient crews and equipment to undertake the estimated square meters of pavement cut restoration** in this Contract.

Our bid had been based on those estimated quantities. We also had relied on that (as was intended by the tender package) in determining the amount of work we took on otherwise for the City and for other municipalities and customers.

APM has complied with this contractual requirement. We have supplied sufficient crews and equipment to undertake the estimated quantities set out in the Request for Tender and Contract. However, the City insisted that we are required to complete all restoration work within six weeks regardless of the quantities we are asked to perform.

The City has pointed to the following provision in the contract:

All Works required under each weekly listing shall be completed within 6 calendar weeks of the issue date.

This wording contemplated the City issuing weekly listings of cuts to be restored. Since the City implemented the Cityworks system, it no longer issues weekly lists, but instead notifies APM of cuts needing restoration through the issuance of work orders of which APM is notified through an “In Box” in Cityworks. The City contends that APM “is contractually given 6 weeks to complete a restoration once notified”. Despite the clear wording of the contract that we are only required to provide sufficient crews and equipment to undertake the estimated quantities, the City told us that we are required to supply additional crews and equipment sufficient for the increased actual quantities (that is, about double the estimated quantities stated in the contract).

It seems to us that the City considers the problems caused by the actual quantities so significantly exceeding the estimated quantities in the contract to be ours alone to solve. The logical extension of the City’s interpretation of what we are required to do under the contract is that, even if the actual quantities we are asked to undertake exceed the estimates by ten-fold, we would still be required to complete the restoration of the cuts in six weeks --- even if it consumed our company’s entire workforce and equipment and beyond that.

As well, it could not reasonably have been intended that the six-week provision strictly apply to sodding, given that due to our climate and weather conditions, practically speaking there is a short window when sodding can occur. In recognition of this, there has been an understanding between APM and the City that there must be some reasonable latitude as to the six-week time period for sodding and that backlogs will occur, which will carry over into the next year. On top of that, none of the sodding restoration for road cuts done over the winter can be commenced until the weather improves in May (meaning that the winter road cuts are added to whatever backlog there was as of the end of the previous year’s sodding season).

In addition, significant time was lost due to COVID and due to weather conditions (typically, snow or rain). The City also requires that APM apply their crews to urgent situations, typically water main breaks.

Even though the restoration work the City has requested that we do has exceeded what had been stated to be our contractual obligation, in good faith we have worked diligently and cooperatively with the City to complete restoration of the unanticipated volumes and also to accommodate the increased requirements of the City’s new Cityworks process, the introduction of which partway through this Contract coincided with the challenges of the greatest increase in quantities and the COVID pandemic which began early in 2020 and continues.

We have been sensitive to the fact that residents complain to the City and to Councillors when restoration does not occur promptly. We have accommodated directions from the City to perform what the City advises is priority work (which has included often being directed to perform work orders well within the six-week timeframe instead of performing older work orders, regardless of locations where our crews have been working), although this has led to inefficiencies in the sequencing of our work and caused ripple effects which have increased the overall time required to perform work orders. The City providing to

APM weekly priority lists and requiring that APM apply their crews according to those lists was not provided for in the Contract.

We have also equipped our crews with tablets for photographing restorations. We have also kept the City informed on a daily basis of where our crews are to be working.

We did add crews and equipment for restoration work, as is clear from the fact that by year's end had approved work amounting to about double what had been agreed to. We have sometimes had six crews working on restorations.

it is important to understand that adding crews is not a simple matter. During the Covid pandemic, labour has sometimes been in short supply (industry-wide). As well, adding crew members alone is not sufficient; we have to have equipment available for additional crew(s) to utilize. As well, even if we could have crews and equipment work on Saturdays, we would also have to open up our asphalt plant, which involves significant cost.

We note that in the City's Request For Prequalifications for next year's Pavement Cuts Restoration Contract it is stated:

The Contractor will be required to maintain records on regular basis in the City of Hamilton's current project management software using Contractor provided devices to update the statuses of individual work orders, upload photos and comment as required.

There was no such requirement to maintain records, update statuses of individual work orders or upload photos in the City's project management software stated in the Request for Tender or in the Contract for 2018 (renewed by the City for 2019, 2020 and 2021). This is a significant change in the City's administrative process and from what had been required of us in the first two years of the current Contract, which the City imposed during the course of the current Contract and we have had to adjust to and accommodate.

In addition to increasing time and effort required of APM, the administrative process the City has introduced and required that APM follow has created lags and increased the steps and time before work APM have performed is considered by the City to be "complete", even though the actual restoration work may have been finished by APM weeks before the City considers APM's work to be "complete". This and the City's new system of issuing multiple work orders for each cut has led to an increase in the number of items of work which the City considers to be "incomplete".

Even though the City considered many work orders to not be closed, the City still considered APM's performance to be sufficiently satisfactory that the City chose to exercise its option to extend the term of the Contract for a further (fourth) year, through to November 30, 2021.

By the spring of 2021, through additional crews and keeping our asphalt plant open in the winter months, we had essentially caught up as to hard surface restoration. There was still a sodding carryover from 2020, plus restoration required over the winter.

We note that the June 10, 2021 Vendor Performance Evaluation Form we received from the City for the first time on October 26th rates APM's performance as "satisfactory" in all

categories and states that “*hard surface restorations have been brought to the 6 week timeline*” and that “*sod restorations are lagging*”.

We optimistically forecast that our sodding subcontractors would be able to achieve more progress than the wet and extremely hot weather after June 10th permitted.

The August 17th Vendor Incident Report

On August 17th, 2021 we received the one and only Vendor Performance Incident Reporting Form we have received from the City as to the 2017 Road Cuts Contract.

We provided detailed responses to the City on August 20th and 27th. We do not know whether those responses were provided to the Procurement Sub-Committee.

The Incident Reporting Form stated that APM “*is contractually given 6 weeks to complete a restoration once notified*”. We do not agree, as stated above. The Reporting Form also stated that the City required that 474 work orders be restored and invoiced by the end of the day on August 20th, only 3 days after City issued the Incident Report to us.

As the City knew when it issued the Reporting Form, the actual restoration work for the majority of the 474 work orders that the City indicated on the Reporting Form were “incomplete” had already been done. As the City also knew, all but a very few of the 474 work orders were for soft surface work which had been understood to not be subject to a six-week time period requirement due to the short window for performing that work and this summer’s conditions (rain and extreme heat).

Not only was that unreasonable and unfair for the City to require that the 474 work orders be “restored and invoiced” by August 20th, that was practically speaking impossible.

As described in APM’s August 27th letter, under the City’s administrative process, APM does not “*invoice*” and the administrative measure of “complete” for a work order which the City imposed during the term of the Contract depends on the City performing the step of entering line items (the actual quantities supplied) in Cityworks for each work order. In their August 20th letter, APM stated that 303 of the 474 work orders were as of that date ready for the City to enter line items in Cityworks. From APM’s review of Cityworks, there had been significant delay in the City completing the entering of line items in Cityworks for those 303 work orders.

The City’s insistence that all work orders issued up to July 31st be “*restored and invoiced*” by September 11th was also unreasonable and unfair, particularly considering:

- the quantities required to fulfill the work orders;
- the extremely hot weather, which continued until August 27th;
- the City’s continued issuance of weekly priority lists;
- the administrative process implemented by the City during this Contract;
- ongoing COVID precautions and restrictions.

APM has since provided schedules for restoration which are realistic, in the face of weather constraints and priority lists, not to mention emergency work the City requires that APM perform.

Has the Commercial Relationship Between APM and the City Been Impaired?

We do not believe that the commercial relationship between APM and the City has been impaired such that APM should be banned from bidding for the 2021 Road Cuts Contract.

We believe that a more correct characterization of what has occurred that a disagreement arose between the City and APM in challenging and unanticipated circumstances that arose in 2020 and continued into 2021.

We have applied ourselves with commitment and in good faith, such that the only significant issue is the sodding backlog, which unfortunately was inevitable.

There is no reason to doubt that APM can satisfactorily perform what is required under the 2021 Road Cuts Contract. This has already been the determination of the prequalification Evaluation Team.

We have the same project management team in place that the City has commended for our competence and dedication.

It is important to note that the stated quantities for the 2021 Road Cuts Contract are significantly higher than the quantities which had been estimated for the 2017 Road Cuts Contract. As well, the requirement for sodding restoration has essentially been replaced by restoration through placement of topsoil and seed. We are particularly well-qualified for that, as we are able to keep topsoil in our climate-controlled Lottridge Rd. facility.

Is It Fair and in the Public Interest that APM Be Banned from Bidding?

We feel that banning us would not be fair. We also feel that it would not in the interests of City to reduce competition for the upcoming contract. We plan on submitting a competitive bid and if we are banned the result might be that the City will have to pay a higher contract price than would be the case if we are permitted to bid.

The qualifications of APM and its performance have been rigorously reviewed by the City's Evaluation Team, in deciding to prequalify APM for the 2021 Road Cuts Contract. That review was far more comprehensive than any review that this Committee or the Council will be engaging in. There is no reason to override the determination by the Evaluation Team.



Associated Paving & Materials Ltd
5365 Munro Court
Burlington, Ontario - L7L 5M7
Tel: 905-637-1966 Fax: 905-637-1404
Web: www.associatedpaving.com

We respectfully ask that we not be banned from bidding for the 2021 Road Cust Contract.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan Capobianco', is positioned above the typed name.

Stan Capobianco, President

Associated Paving & Materials Ltd

Tel: 905 637-1966

Fax: 905 637-1404

Submitted on Wednesday, November 3, 2021 - 9:51am Submitted by anonymous user:
172.70.42.112 Submitted values are:

==Committee Requested==

Committee: Audit, Finance & Administration Committee

==Requestor Information==

Name of Individual: Stan Capobianco, Marco Capobianco, Roger B. Campbell
(Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel)

Name of Organization: Associated Paving & Materials Ltd.

Contact Number: 416-365-3510 (Howard Krupat of DLA Piper (Canada) LLP)

Email Address: howard.krupat@dlapiper.com

Mailing Address:

1. Stan Capobianco
Marco Capobianco
Associated Paving & Materials Ltd.
5365 Munro Court
Burlington, ON L7L 5M7
2. Roger B. Campbell
Legal Counsel
4145 North Service Road
Suite 200
Burlington, ON L7L 6A3
3. Howard D. Krupat
DLA Piper (Canada) LLP
Suite 6000,1 First Canadian Place
Toronto ON M5X 1E2

Reason(s) for delegation request:

To make submissions to the Committee regarding the commercial relationship between the City and Associated Paving, specifically with respect to the Committee's consideration of the recommendations made by the Manager of Procurement and City Staff in the letter sent by the Manager of Procurement to Associated Paving dated October 19, 2021 (the "Recommendation Letter"), as considered by the Procurement Sub-Committee on October 29, 2021.

To make submissions to the Committee requesting a fair process in accordance with the duty of fairness owed by the City to Associated Paving regarding the matters raised in the Recommendation Letter.

To make submissions to the Committee requesting full disclosure of:

(i) the reports, documents and communications that are being provided to the Committee confidentially and without disclosure to Associated Paving, despite Associated Paving's vested interest;

(ii) the reports, documents, and communications that were relied upon the the Procurement Sub-Committee in camera when considering this matter on October 29, 2021; and

(iii) the particulars of the decisions made by the Procurement Sub-Committee in camera after considering this matter on October 29, 2021, which have yet to be provided to Associated Paving, despite their vest interest in those decisions.

To make submissions opposing any ban that is being considered or recommended regarding the road cut restoration contracts that are the subject of the Recommendation Letter.

To request that more than 5 minutes be allocated to Associated Paving to speak to these matters given the complexity and nature of the matters and contracts at issue.

Will you be requesting funds from the City? No

Will you be submitting a formal presentation? Yes



ASSOCIATED PAVING

Background

- ▶ Full-Service Company
- ▶ Established in 1966
- ▶ Family Owned and Operated
- ▶ Members of the Hand Association
- ▶ Members of LIUNA Local 837 Union
- ▶ Members of Local 793 International Union of Operating Engineers
- ▶ Servicing Hamilton for over 20 Years



C15-71-17 Utilities Restorations Contract

- ▶ The scope of Work consists of the permanent restoration of utility cuts in asphalt and concrete pavement, sidewalks, curbs, driveway approaches and alleyways required on streets within the limits of the City of Hamilton. Utility cuts are produced by:
 - a) Union Gas Limited
 - b) Bell Canada
 - c) Cable
 - d) Alectra Utilities
 - e) City of Hamilton - water service replacements, sewer and watermain repairs.
 - f) Private Contractors

Challenges In Completion Of Restorations.

1. Contract Estimated Quantities Greatly Exceeded
2. Variations in City's Contract Administration Procedures Over the 4 Year Term
3. Seasonal Material Constraint and Delays Outside of Contractor control
4. City's Required Priority Lists Affecting Productivity

1. Contract Estimated Quantities Greatly Exceeded

SPECIAL PROVISIONS GENERAL

1. CONSTRUCTION AND MATERIAL SPECIFICATION MANUAL

Notice of Revision No. 6

All Work in this Contract shall be in accordance with Revision No. 6. All bidders are responsible to obtain and include for all revisions.

<https://www.hamilton.ca/develop-property/policies-guidelines/construction-and-material-specifications>

2. SCOPE

The scope of Work consists of the permanent restoration of utility cuts in asphalt and concrete pavement, sidewalks, curbs, driveway approaches and alleyways required on streets within the limits of the City of Hamilton. Utility cuts are produced by:

- a) Union Gas Limited
- b) Bell Canada
- c) Cable
- d) Alectra Utilities
- e) City of Hamilton - water service replacements, sewer and watermain repairs.
- f) Private Contractors

Road restoration Work shall be conducted on arterial and local roads throughout the City as required and shall consist of the following annual estimated quantities:

- o Asphalt on granular road restoration – 23,000 square metres
- o Asphalt on concrete road restoration – 25 square metres
- o Exposed concrete and asphalt on concrete road restoration – 25 square metres
- o Concrete sidewalk, driveway, approach and walkway restoration – 5,500 square metres
- o Concrete curb restoration on local and arterial roads - 800 linear metres
- o Asphalt driveway restoration - 2800 square metres
- o Supply and placement of topsoil, sod and seed – 3,000 square metres
- o Cold weather placement and protection of concrete

In all cases, removal and disposal of the temporary restoration and excavated materials shall be included in the permanent restoration costs as noted in the above items.

By definition, the existing surface treatment as left by the permit holder (hot mix asphalt,

FORM OF TENDER SCHEDULE OF QUANTITIES AND PRICES CONTRACT No. C15-71-17 (H)

LOCATION: Various locations in the City of Hamilton

DESCRIPTION: Permanent Restoration of Pavement Cuts in Asphalt and Concrete Pavements

Item No.	Spec No.	Description	Unit of Measure	Estimated Quantity	Unit Price	Extended Price
1	SP106	Supply Insurance and Performance, Labour and Materials Payment Bonds.				
				lump sum (Insert Extended Price Only)	\$	
2	SP37 SP41	Mill existing asphalt 50mm deep, including the application of tack coat to the milled surface prior to paving.	square metre	1,000	\$	\$
3	SP35 SP12	Full depth asphalt restoration to asphalt on granular roads:				
	a)	50mm Superpave 9.5, PG 58-28, (Traffic Category C), surface course and 110mm Superpave 19, PG 58-28, (Traffic Category C), binder course.	square metre	7,000	\$	\$
	b)	Additional costs to Item 3(a) for repairs during winter months.	square metre	2,000	\$	\$
	c)	50mm Superpave 12.5, PG 58-28, (Traffic Category C), surface course and 170mm Superpave 19, PG 58-28, (Traffic Category C), binder course.	square metre	12,000	\$	\$
	d)	Additional costs to Item 3(c) for repairs during winter months.	square metre	3,000	\$	\$
	e)	50mm Superpave 12.5, PG 58-28, (Traffic Category C), surface course. 260mm Superpave 19, PG 58-28, (Traffic Category C), binder course.	square metre	4,000	\$	\$
	f)	Additional costs to Item 3(e) for repairs during winter months.	square metre	1,000	\$	\$

1. Contract Estimated Quantities Greatly Exceeded

6. WORK SCHEDULE

Construction Schedule

The Contractor will be required under this Contract to supply sufficient crews and equipment to undertake the estimated square meters of pavement cut restoration in this Contract.

Weekly List

The City will provide a list of restoration locations to the Contractor each week. Each list may contain up to 400 restoration locations. The Contractor shall be required to complete each list of within a six week time period from the date of issue. Restoration operations shall be conducted over the entire year including the winter months.

The Contractor will receive first weekly list before **December 8, 2017**, and will continue to receive weekly lists by the end of each week for the duration of the Contract. A restoration location shall be restored and complete within two weeks from the date it was started.

The Contractor shall provide the Project Manager with a schedule of restoration locations in progress at the start of each week.

The Contract includes all areas of the City of Hamilton.

The City will consider a list complete when all required asphalt, concrete, sod, private restoration and cleanup is completed for each cut on each list, to the satisfaction of the Project Manager.

Liquidated damages will be applied to each outstanding list separately and the application of penalties will be cumulative.

See also Liquidated Damages and Time for Completion in these Special Provisions.

6. WORK SCHEDULE

Construction Schedule

The Contractor will be required under this Contract to supply sufficient crews and equipment to undertake the estimated square meters of pavement cut restoration in this Contract.

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The Contractor shall provide the Project Manager with a schedule of restoration locations in progress at the start of each week.

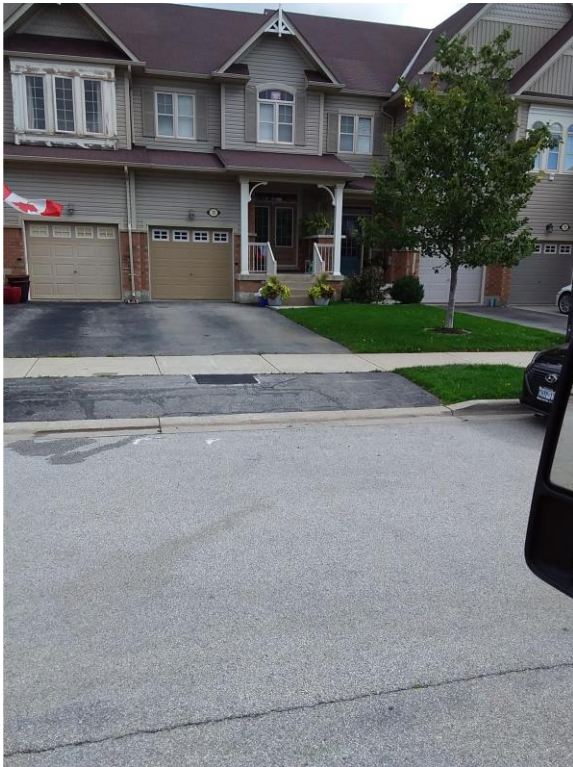
The Contract includes all areas of the City of Hamilton.

The City will consider a list complete when all required asphalt, concrete, sod, private restoration and cleanup is completed for each cut on each list, to the satisfaction of the Project Manager.

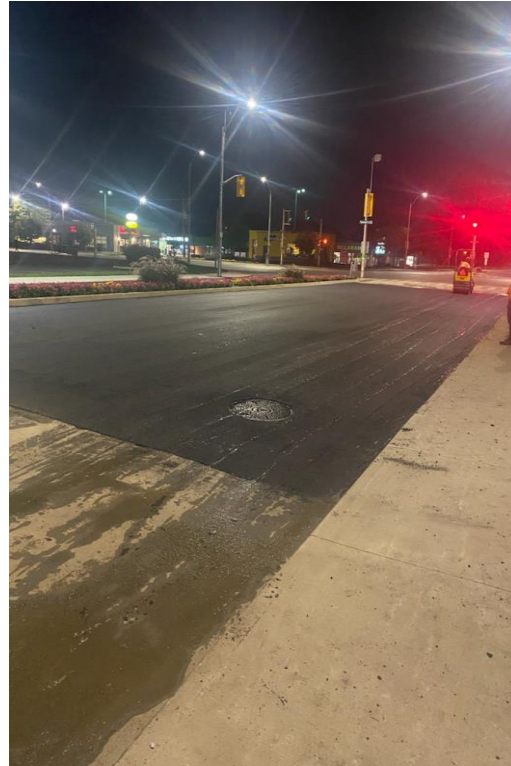
Liquidated damages will be applied to each outstanding list separately and the application of penalties will be cumulative.

See also Liquidated Damages and Time for Completion in these Special Provisions.

1. Contract Estimated Quantities Greatly Exceeded



Delcar Crt
Driveway Restoration
Area = 0.36m²
Completion Time: 10mins



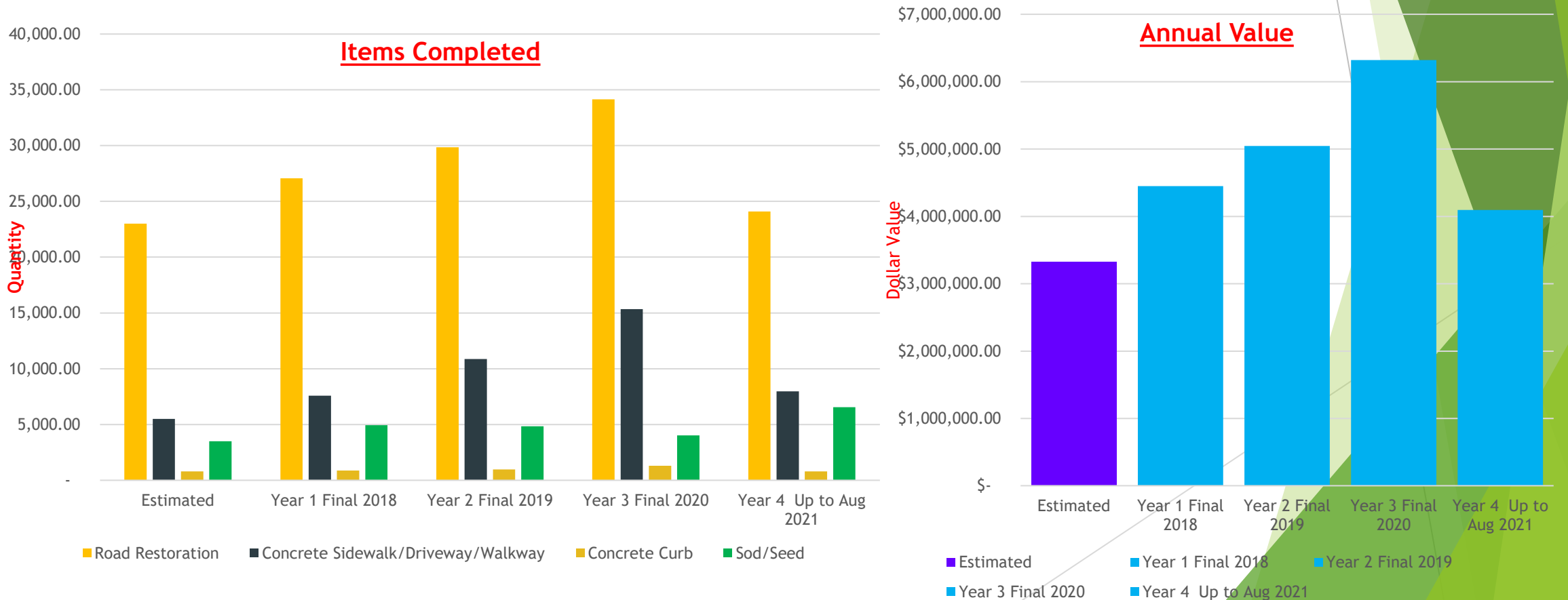
Upper Gage St @ Fennel Ave
Area = 316m²
Completion Time: 18 Hours



1951 Rymal Rd
Area = 386m²
Completion Time: 23 Hours Over 2 Days

1. Contract Estimated Quantities Greatly Exceeded

► *How has this Affected APM?*



1. Contract Estimated Quantities Greatly Exceeded

► *How has APM Responded to Exceeded Quantities?*



2. Variations in City's Contract Administration Procedures Over the 4 Years

Week 34 2017 - Aug 22 2017 due October 6 2017												
	Complete		ID	Name	Distric	Mark	Picture	Geometr	Sod	Joint Hea	CI Clas	Comments
21-Aug-17		82 HOUGHTON N, HAMILTON	Pw6143273	w/w/w	3E	Y	Y	Y	Y 4.3*1.2	N	2	ASP ROAD, CW-C, SOD
Mar 15 2017	Mar 15 2017	1036 FENNELL AVE E HAMILTON	Pw6110320	w/w/w	4E	Y	Y	Y	N	N	3	Road, Walk, Approach, Driveway
Aug 1 2017	Aug 2 2017	165 BARNESDALE AVE N HAMILTON	Pw6190055	w/w/w	3E	Y	Y	Y	Y - 3.1m x 1.0m	N	4	ROAD, WALK, SOD, PRIV WALK
Aug 1 2017	Aug 2 2017	34 BEAVERTON DR HAMILTON	Pw6190144	w/w/w	4E	Y	Y	Y	N	N	2	ROAD
Aug 1 2017	Aug 2 2017	1338 UPPER GAGE AVE HAMILTON	Pw6190171	w/w/w	4E	Y	Y	Y	N	N	2	WALK, CURB
February 2 2017	Aug 1 2017	87 and 91 Huxley Ave S...cut at # 87 only	EP12522A	Alcetra	3E	Y	Y	Y	N	N	3	Driveway
Aug 3 2017	Aug 4 2017	40 GLADESTONE AVE, HAMILTON	Pw6191692	w/w/w	3E	Y	Y	Y	Y - 5.30m x 1.0m	N	3	ROAD, WALK, SOD
July 31 2017	Aug 3 2017	186 GRENFELL ST HAMILTON	Pw6190368	w/w/w	3E	Y	Y	Y	N	N	3	ROAD
Aug 2 2017	Aug 3 2017	36 BURRIS ST HAMILTON	Pw6190408	w/w/w	3E	Y	Y	Y	Y - 3.30m x 0.80m	N	2	ROAD, SOD
Aug 2 2017	Aug 3 2017	87 TRAGINA AVE S HAMILTON	Pw6190451	w/w/w	3E	Y	Y	Y	Y - 2.80m x 1.0m	N	2	ROAD, SOD
Aug 2 2017	Aug 3 2017	62 ST. CLAIR AVE HAMILTON	Pw6190593	w/w/w	3E	Y	Y	Y	Y - 4.30m x 1.00m	N	2	ROAD, SOD
Aug 2 2017	Aug 3 2017	103 TRAGINA AVE S HAMILTON	Pw6190667	w/w/w	3E	Y	Y	Y	NO SOD DONE BY OWNER	N	2	ROAD
Aug 2 2017	Aug 3 2017	60 CAMBRIDGE AVE HAMILTON	Pw6190676	w/w/w	3E	Y	Y	Y	N	N	3	ROAD
Aug 3 2017	Aug 4 2017	70 BIRCH AVE HAMILTON	Pw6191803	w/w/w	3E	Y	Y	Y	Y - 3.0m x 1.0m	N	3	ROAD, SOD
Aug 3 2017	Aug 4 2017	204 KENSINGTON AVE N HAMILTON	Pw6191823	w/w/w	3E	Y	Y	Y	N	N	2	ROAD, WALK, PRIV WALK
Aug 4 2017	Aug 4 2017	665 KING ST E HAMILTON	Pw6191842	w/w/w	3W	Y	Y	Y	N	N	3	ROAD
Aug 3 2017	Aug 4 2017	81 CRANE CRT HAMILTON	Pw6191843	w/w/w	3W	Y	Y	Y	Y - 3.3m x 1.2m	N	3	ROAD, WALK, DRIVEWAY, APPROACH, SOD
Aug 3 2017	Aug 4 2017	33 CENTURY ST HAMILTON	Pw6191864	w/w/w	3W	Y	Y	Y	Y - 0.5m x 0.5m	N	4	SOD, TOP SOIL
Aug 4 2017	Aug 8 2017	174 WEST 32ND ST HAMILTON	Pw6192354	w/w/w	4W	Y	Y	Y	N	N	3	ROAD, WALK, RIVER ROCK FOR GARDEN
Aug 4 2017	Aug 8 2017	75 CUMBERLAND AVE HAMILTON	Pw6192374	w/w/w	3E	Y	Y	Y	N	N	2	ROAD
Aug 4 2017	Aug 8 2017	28 EVERTON PL HAMILTON	Pw6192404	w/w/w	3E	Y	Y	Y	3.8m x 1.70m + 2.10m x 1.4	N	3	ROAD, WALK, SOD
Aug 4 2017	Aug 8 2017	PRINCESS ST @ WEST OF BIRCH ST, HAMILTON	Pw6192527	w/w/w	3E	Y	Y	Y	1.9m x 2.0m	N	3	ROAD, CURB, SOD
Aug 4 2017	Aug 8 2017	175 WEST 27TH ST HAMILTON	Pw6192551	w/w/w	4W	Y	Y	Y	Y - 5m x 1m	N	2	ROAD, WALK, SOD, TOP SOIL
Aug 4 2017	Aug 8 2017	25 EAST 34TH ST HAMILTON	Pw6192553	w/w/w	4E	Y	Y	Y	N	N	2	ROAD, WALK, DRIVEWAY, PRIV CURB PRECAST ON SITE
Aug 4 2017	Aug 8 2017	170 MOHAWK RD W HAMILTON	Pw6192560	w/w/w	4W	Y	Y	Y	Y - 3m x 6m	N	1	ROAD, CURB, SOD, TOP SOIL
July 26 2017	Aug 8 2017	43 Garden Avenue, Hamilton	EP14044A	Bell	4W	Y	Y	Y	N	N	3	Walk
Aug 6 2017	Aug 9 2017	47 FORESTGATE DR HAMILTON	Pw6192587	w/w/w	4W	Y	Y	Y	N	N	1	ROAD, WALK, DRIVEWAY
Aug 8 2017	Aug 9 2017	22 ROSEDENE AVE, HAMILTON	Pw6193023	w/w/w	4W	Y	Y	Y	Y - 4.70m x 1.50m	N	2	ROAD, WALK, SOD, TOP SOIL, PRIVATE WALK
Aug 8 2017	Aug 9 2017	80 WEST AVE N HAMILTON	Pw6193063	w/w/w	3W	Y	Y	Y	N	N	2	ROAD, WALK, SOD
Aug 8 2017	Aug 9 2017	192 BUCKINGHAM DR, HAMILTON	Pw6193067	w/w/w	4W	Y	Y	Y	N	N	3	ROAD, WALK, DRIVEWAY, CURB
Aug 8 2017	Aug 9 2017	252 ROSSLYN AVE N, HAMILTON	Pw6193280	w/w/w	3E	Y	Y	Y	Y - 2m x 2m	N	2	WALK, SOD
Aug 8 2017	Aug 10 2017	KENILWORTH AVE N, SOUTH OF ALBANY AVE, SE CORNER	Pw6193296	w/w/w	3E	Y	Y	Y	N	N	3	ROAD, WALK, PVD BLVD, CURB, CB ADJ
Aug 8 2017	Aug 10 2017	149 PROSPECT ST N HAMILTON	Pw6193314	w/w/w	3E	Y	Y	Y	N	N	3	ROAD
Aug 9 2017	Aug 10 2017	84 TISDALE ST N HAMILTON	Pw6193497	w/w/w	3W	Y	Y	Y	Y - 3.6m x 1.0m	N	3	ROAD, WALK, SOD
Aug 9 2017	Aug 10 2017	23 ROSSLYN AVE N HAMILTON	Pw6193700	w/w/w	3E	Y	Y	Y	N	N	2	TOPSOIL FOR GARDEN SEE OWNER
Aug 9 2017	Aug 10 2017	325 JAMES ST S HAMILTON	Pw6193716	w/w/w	3W	Y	Y	Y	N	N	2	ROAD
Aug 9 2017	Aug 10 2017	336 EAST 37TH ST HAMILTON	Pw6193776	w/w/w	4E	Y	Y	Y	NO SOD REQUIRED	N	4	ROAD, WALK
Aug 9 2017	Aug 10 2017	297 PARKWOOD CRES HAMILTON	Pw6193777	w/w/w	4E	Y	Y	Y	N	N	3	ROAD
Aug 9 2017	Aug 10 2017	726 STRATHEARNE AVE	Pw6193798	w/w/w	3E	Y	Y	Y	Y - 2m x 2m	N	3	ROAD, SOD, CURB
Aug 9 2017	Aug 10 2017	93/103 WISE CRES HAMILTON	Pw6193804	w/w/w	4E	Y	Y	Y	N	N	3	ASP DRIVEWAY
July 17 2017	Aug 4 2017	257 Wellington Street North, Hamilton	EP13092A	UNION GAS Maint.	3W	Y	Y	Y	N	N	2	WALK
July 17 2017	Aug 4 2017	255 Wellington Street North, Hamilton	EP13091A	UNION GAS Maint.	3W	Y	Y	Y	N	N	2	WALK
July 17 2017	Aug 1 2017	33 Fennell Avenue East Hamilton	EP13083A	UNION GAS Maint.	4W	Y	Y	Y	N	N	4	ROAD, DRIVEWAY x2
July 17 2017	July 19 2017	310 Barton Street East, Hamilton	EP13095A	UNION GAS Maint.	3W	Y	Y	Y	N	N	3	WALK
Aug 9 2017	Aug 11 2017	185 Parkview Dr Hamilton	Pw6193818	w/w/w	3W	Y	Y	Y	N	N	3	ROAD
Aug 9 2017	Aug 11 2017	32 Rosslyn Ave N, Hamilton	Pw6193820	w/w/w	3E	Y	Y	Y	N	N	2	ROAD, WALK, CONC DRIVE
Aug 9 2017	Aug 11 2017	40 East Ave N	Pw6193831	w/w/w	3W	Y	Y	Y	Y - 4.3m x 1.0m	N	2	ROAD, SOD
Aug 10 2017	Aug 11 2017	209 MacNab St. N @ Colbourne St. SW corner	Pw6194096	w/w/w	3W	Y	Y	Y	N	N	3	ROAD, WALK
Aug 10 2017	Aug 11 2017	17 Melbourne St. Hamilton	pw6194195	w/w/w	3W	Y	Y	Y	N	N	2	ROAD

2. Variations in City's Contract Administration Procedures Over the 4 Year

ROAD CUT RESTORATIONS CONTRACT C15-20-14													TOTAL	
PAYMENT # 7														
DATE SUBMITTED: September 21, 2017														
SUBMITTED BY: Marco Capobianco														
Crew	Date complete	Location	Work Sheet #	Week	ID	Column 1 Item#	Column 2 Unit Price	Length	Width	Area	Item Total	Total	Comments	
Rick	14-Aug					9				1.8	\$0.00			
Rick	14-Aug	436 StoneChurch Rd E			EP14062A	7				2.4	\$0.00			
Rick	14-Aug	835 STONE CHURCH RD E HAMILTON			Pw6166849	7				4.5	\$0.00			
Rick	14-Aug	895 UPPER GAGE AVE, HAMILTON			EP13051A	7				2.3	\$0.00			
Rick	10-Aug	921 UPPER GAGE AVE, HAMILTON			EP13052A	7				2.3	\$0.00			
Rick	10-Aug	943 UPPER GAGE AVE, HAMILTON			EP13053A	7				2.5	\$0.00			
Rick	10-Aug	963 UPPER GAGE AVE, HAMILTON			EP13054A	7				2.4	\$0.00			
Rick	10-Aug	416 EAST 37TH ST HAMILTON			Pw6168221	8				11.1	\$0.00			
basso	23-Aug					5c		4.4	3	13.2	\$0.00			
Rick	10-Aug	225 FERNWOOD CRES HAMILTON			Pw6172038	8				10	\$0.00			
basso	23-Aug					5c		4.7	5.7	26.79	\$0.00			
basso	23-Aug					20		5	3.4	17	\$0.00			
basso	23-Aug	386 UPPER KENILWORTH, HAMILTON AVE			EP13048A	5c		1.8	1.4	2.52	\$0.00			
Rick	10-Aug	1256 FENNEL AVE E HAMILTON			Pw6169766	15				2.5	\$0.00			
basso	23-Aug					5c		5.8	4.7	27.26	\$0.00			
Rick	10-Aug	440 UPPER OTTAWA ST HAMILTON			Pw6167868	7				6.9	\$0.00			
basso	23-Aug					5c		6.7	4	26.8	\$0.00			
Rick	10-Aug	554 UPPER SHERMAN AVE HAMILTON			Pw6170623	7				4.7	\$0.00			
Rick	24-Aug	60 Gray Rd, Stoney Creek			EP1575A	8				7	\$0.00			
Rick	24-Aug	173 GAINSBOROUGH RD HAMILTON			Pw6165343	8				7.8	\$0.00			
basso	1-Sep					5c		5.5	5	27.5	\$0.00			
Rick	24-Aug	257, 259 GRAY RD STONEY CREEK			Pw6172035	7				6.6	\$0.00			
Rick	24-Aug					15				4.7	\$0.00			
basso	1-Sep					5c				59	\$0.00			
Rick	24-Aug	417 Highway 8 Stoney Creek			EP12451A	7				2.3	\$0.00			
basso	1-Sep					20		3.6	1.2	4.32	\$0.00			
Rick	24-Aug	419 Highway 8 Stoney Creek			EP12452A	7				5.1	\$0.00			
basso	1-Sep					20		2.8	1.4	3.92	\$0.00			
Rick	24-Aug	176 Millen Road Stoney Creek			EP12450A	7				3	\$0.00			
Rick	24-Aug	7 HERBERT CRT STONEY CREEK			Pw6172638	7				16.3	\$0.00			
basso	1-Sep					5c		3.4	2.8	9.52	\$0.00			
Above submitted Sept 13th						Above submitted Sept 13th								
Rick/basso	24-Aug	350 parkdale dr			EP12602A	6				9	\$0.00			
Rick/basso						4a				9	\$0.00			
Rick/basso						5c				17.73	\$0.00			
Rick/basso						25				1	\$0.00			
Basso	20-Aug	West ave @ wilson			EP12757A	5c				52.85	\$0.00		Addition to west ave cut as per email by rob	
						25				1	\$0.00			
Rick/basso	23-Aug	64 MELROSE AVEN, HAMILTON			EP12800A	7				9.9	\$0.00			

2. Variations in City's Contract Administration Procedures Over the 4 Year

The screenshot shows the Cityworks web application interface. The browser tabs include 'search results - fleet complete', 'Login | Fleet Complete', 'Tracking', and 'Cityworks'. The address bar shows the URL: <https://ham-cityworks.hamilton.ca/CityworksProd/Inbox/InboxPage.aspx?tab=278&>. The Cityworks logo is visible in the top left, and a search bar and user profile 'Associate, Leadhand' are in the top right.

The main content area is titled 'Inbox' and features several tabs: 'READY FOR RESTORATION' (selected), 'RESTORATIONS - HARD SURFACE', 'RESTORATIONS - SOFT SURFACE', 'BILLING/INVOICING', and 'Reports'. Below these tabs, there are two side-by-side windows, both titled 'Issued to Contractor'. The left window displays a table of restoration projects.

Wo	Description	Priority	Status	Actual Start	Address
20110	Concrete Sidewalk Restoration	2	IN PROGRESS	09/30/2021 3:49 PM	3033 Binbroc
26524	Asphalt Road Surface Restoration	2	IN PROGRESS	01/4/2021 12:27 PM	196 WILSON
26525	Asphalt Road Surface Restoration	2	IN PROGRESS	01/4/2021 12:27 PM	196 WILSON
26526	Asphalt Road Surface Restoration	2	IN PROGRESS	01/4/2021 12:27 PM	198 WILSON
28406	Sod Restoration	2	IN PROGRESS	08/18/2021 11:59 AM	Genoa Drive
29184	Concrete Driveway Restoration	2	IN PROGRESS	03/23/2021 2:06 PM	124 FAIRLEI
30181	Concrete Sidewalk Restoration	2	IN PROGRESS	04/29/2021 12:14 PM	562 CANNON
30962	Other Driveway Restoration	2	IN PROGRESS	06/30/2021 5:35 PM	19 RICARD
31062	Concrete Sidewalk Restoration	2	IN PROGRESS	06/18/2021 1:32 PM	685 Britannic
31065	Landscaping Restoration	2	IN PROGRESS	06/18/2021 1:32 PM	142 Duke Str
31383	Landscaping Restoration	2	IN PROGRESS	06/17/2021 3:47 PM	104 Munn St
31391	Concrete Sidewalk Restoration	2	IN PROGRESS	10/28/2021 9:28 AM	Hughson St I
31426	Landscaping Restoration	2	IN PROGRESS	06/18/2021 1:32 PM	79 Poulette S
31581	Other Driveway Restoration	2	IN PROGRESS	06/30/2021 5:20 PM	146 Aberdeen
31619	Concrete Sidewalk Restoration	2	IN PROGRESS	06/30/2021 5:20 PM	29 Granville

At the bottom of the table, there is a 'Rows' dropdown set to '100' and a pagination indicator '1 - 100 of 1216'.

2. Variations in City's Contract Administration Procedures Over the 4 Year

Restoration # 1



Work Order #1

Work Order #2

Work Order #3

2. Variations in City's Contract Administration Procedures Over the 4 Year

The screenshot displays the Cityworks web application interface for a Work Order. The browser address bar shows the URL: <https://ham-cityworks.hamilton.ca/CityworksProd/WorkManagement/WOGeneralEdit.aspx?WorkOrderId=32539>. The page title is "Cityworks".

Work Order Details:

- Type of Work: Road Cut - Hard Surface Restoration
- Work Desc: Asphalt Driveway Restoration
- Entity Type: ROW_CORRIDOR
- Work Order ID: 32539
- Status: IN PROGRESS
- Priority: Medium
- SubStatus: COMPLETED: SUBMIT
- MarkOut By: White, Steve
- MarkOut Date: 07/30/2021 9:51 AM
- Mark Out: 23a - 1.4*5.0 - Asp. Dwy.
- Comments: (empty)
- Assemble WO: Myageri, Saif
- Hold WO Until: (empty)
- Target Restored: 09/10/2021 12:00 PM
- Closed By: (empty)
- Date: (empty)
- Contractor: Associate, Leadhand
- Supervisor: (empty)
- Begin Work: 07/30/2021 11:47 PM
- Restoration Work Comments: no comments
- Restored Date: (empty)
- Verified by: (empty)

Permit Address:

- Permit Address: 500 Dunsmore Road, Hamilton
- Permit Location Details: (empty)
- Street Compeky: 1535888
- Street OCI: 48.59129528
- Ward: 4

Line Items:

Contract Number	Line Item Materials
RC_2021	RC_Aspphalt - Reconstruct asphalt driveways and parking areas -

Attachments:

- + Add attachment... Remove all attachments
- 32539.jpg (3.21 MB, 11/3/2021 3:39 PM, Attached by Associate, Leadhand)
- image.jpg (3.34 MB, 07/30/2021 9:57 AM, Attached by White, Steve)

1. APM Staff notifying City Staff Work permit is completed
2. City Staff enter Quantities for Work Permit
3. APM Staff supplying Photo and verifying quantity
4. City Staff Reviewing Work Permit and approving for payment
5. City Staff issuing Payment to Contractor

2. Variations in City's Contract Administration Procedures Over the 4 Year

► How has this Affected APM?

For Example, *Work Order #32046*
Road Restoration 5.7m x 4m = 22.8m²

- City Mark Out Date: July 12th
 - City Issue to APM: July 16th
 - Completed by APM: August 23rd
 - Submitted by APM: September 8th
 - COH 6-Week Deadline: August 27th
 - COH recognized Completion: September 29th
 - Closed by COH: October 20th
- Two Months After the restoration was completed

Cityworks

Inbox

Work Order | Email | Print | Save | Close | Delete | Location

Work Order

Type of Work: Road Cut - Hard Surface Restoration
 Work Desc: Asphalt Road Surface Restoration
 Entity Type: AM STREETS BY SURFAC | Work Order ID: 32046
 Status: CLOSED | Priority: Medium
 SubStatus: RESTORED
 MarkOut By: Mesicek, Stephen | MarkOut Date: 07/12/2021 10:07 AM
 Mark Out: 3a - 5.7*3.9 - Asp. Road
 Comments: no comments

Assemble WO: | Hold WO Until: |
 Target Restored: 08/27/2021 12:00 PM
 Closed By: Waddell, Bradley | Date: 10/20/2021 2:49:18 PM
 Contractor: Associate, Leadhand | Begin Work: 07/16/2021 12:19 PM
 Supervisor: |
 Restoration Work
 Comments: no comments
 Restoration Work Verified by: Clarke, Sarah | Restored Date: 09/29/2021 12:00 PM

Permit Address

Permit Address: 11 Buchanan Street, Hamilton
 Permit Location Details:
 Street Complex: 1538586 | Street OCI: 62.3759758
 Ward: 8

Line Items

Contract Number	Line Item Materials
RC_2021	RC_Aspphalt - Full depth asphalt restoration to asphalt on granu...
RC_2021	RC_Pavement Deg Fee - OCI Class 2 (OCI = 61 - 80) Good Road

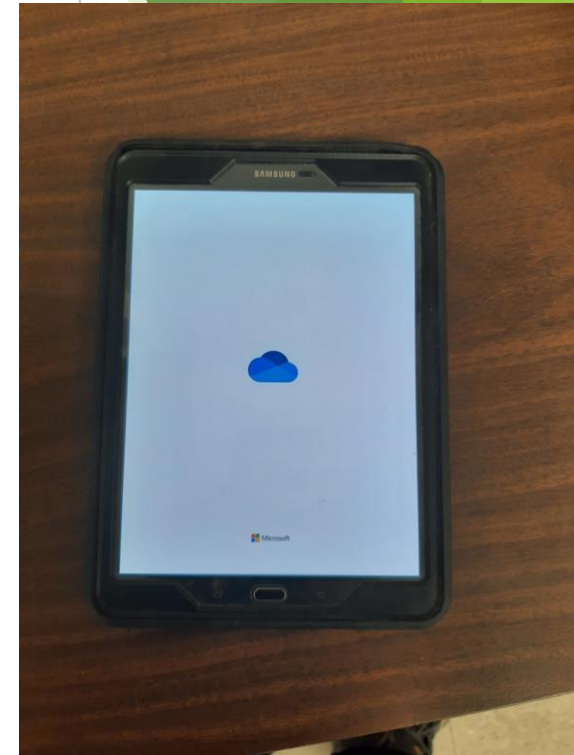
Attachments

+ Add attachment... | Remove all attachments

- 32046.jpeg | Attached by Associate, Leadhand | 2.58 MB | 09/29/2021 12:35 PM
- ADA81B67-B3A7-4E4A-BC89-922C80D0E7FD.jpeg | Attached by Mesicek, Stephen | 3.83 MB | 07/12/2021 10:08 AM
- B96C8271-8E20-4669-8E6E-DABA38FE9EE6.jpeg | Attached by Mesicek, Stephen | 3.82 MB | 07/12/2021 10:08 AM

2. Variations in City's Contract Administration Procedures Over the 4 Year

- ▶ How has APM Responded?
 1. Purchase and implementation of six Samsung Tablet equipment with built-in wireless capability
 2. Countless hours of APM Manages working directly with City Project Managers as well as communicating with City of Hamilton IT Staff to debug software issues and provide input on how to tailer the software to the program from a contractor POV
 3. Hiring an additional staff member to aid in the Administrative back log during part of Term 3 and Term 4



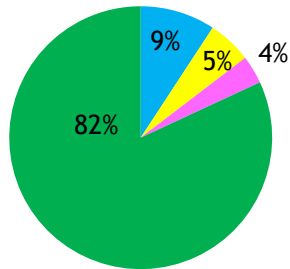
3. Seasonal Material Constraint and Delays Outside of Contractor control

- ▶ Temperature and Weather Sensitive Material
 - ▶ Type 1 Sod
 - ▶ 32Mpa Concrete
 - ▶ SP 9.5mm, Sp12.5mm and SP19mm

3. Seasonal Material Constraint and Delays Outside of Contractor control

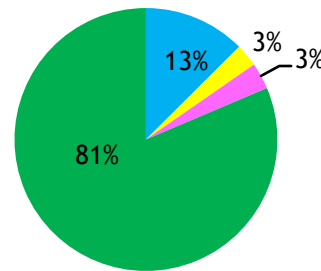
- ▶ How has this Affected APM?
- ▶ APM has not been able to operate on C15-71-17 as below:
 1. Weather (Rain, Snow, Excessive Heat): 24 Days in 2020, 27 Days in 2021
 2. COVID-19 Exposure: 14 Days in 2020, 6 Days in 2021
 3. Statutory Holidays: 9 Days in 2020, 7 Days in 2021

Working Days 2020



■ Inclement weather ■ COVID-19 ■ Statutory Holiday ■ Other

Working Days to Nov.3, 2021



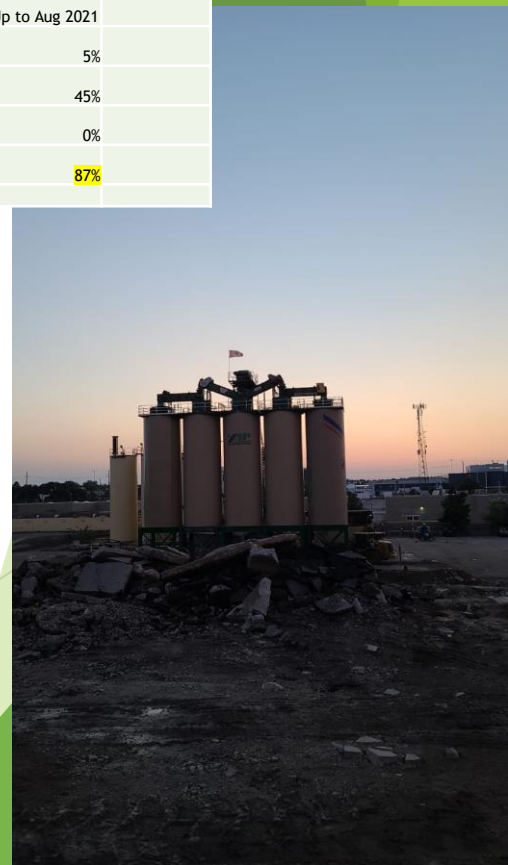
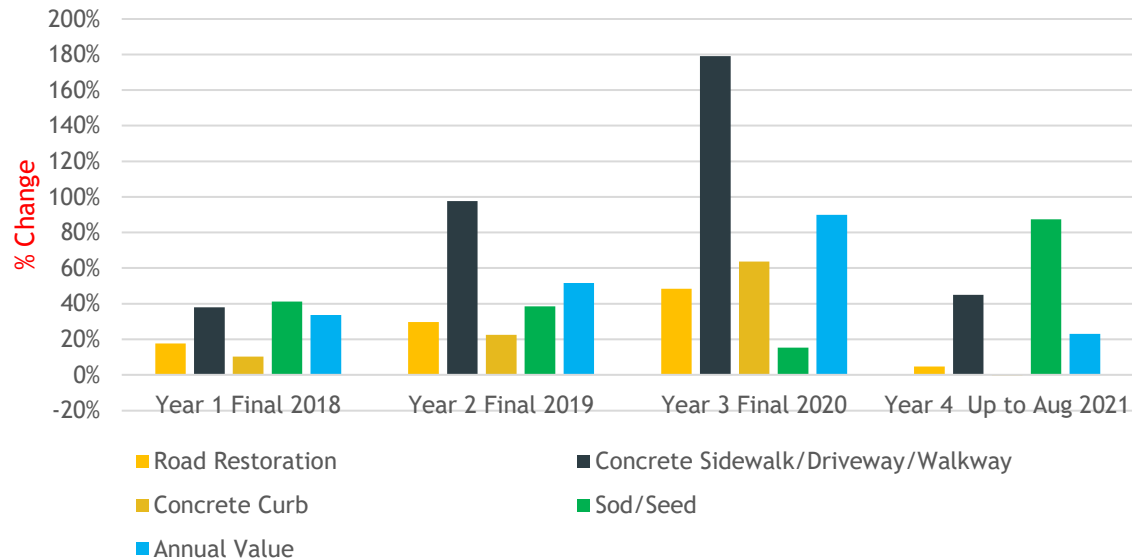
■ Inclement weather ■ COVID-19 ■ Statutory Holiday ■ Other

3. Seasonal Material Constraint and Delays Outside of Contractor control

► How Has APM Responded?

	Estimated	Year 1 Final 2018	Year 2 Final 2019	Year 3 Final 2020	Year 4 Up to Aug 2021		Year 1 Final 2018	Year 2 Final 2019	Year 3 Final 2020	Year 4 Up to Aug 2021
Road Restoration	23,000.00	27,070.55	29,852.30	34,138.13	24,085.84	Road Restoration	18%	30%	48%	5%
Concrete Sidewalk/Driveway/Walkway	5,500.00	7,586.40	10,868.59	15,345.39	7,977.66	Concrete Sidewalk/Driveway/Walkway	38%	98%	179%	45%
Concrete Curb	800.00	882.58	980.17	1,309.00	797.81	Concrete Curb	10%	23%	64%	0%
Sod/Seed	3,500.00	4,945.13	4,849.49	4,033.52	6,560.56	Sod/Seed	41%	39%	15%	87%

% Change over Estimated Quantities



4. City's Required Priority Lists Affecting Productivity

1. Emergency Restoration - To be completed within 24Hr
2. Priority Lists - Given Weekly based on complaints
 - Priority Lists Decrease APM productivity.

Utility Restoration Contract C15-32-21

1. Restoration quantities have increased by to reflect completed quantities of 2020
2. Inclusion of City Works Process, and City Works Expectations
3. Increase Quantity for Topsoil and Seed, Topsoil and Sod - A lesser quantity for sod than we have installed this year.

1.0 SCOPE OF WORK

The scope of work consists of the permanent restoration of utility cuts in asphalt and concrete pavement, sidewalks, curbs, driveway approaches and alleyways required on streets within the limits of the City of Hamilton. Utility cuts are produced by:

- a) Enbridge Gas Ltd.
- b) Bell Canada
- c) Telecommunications
- d) Alectra Utilities
- e) City of Hamilton - water service replacements, sewer and watermain repairs.
- f) Private Contractors

Road restoration Work shall be conducted on arterial and local roads throughout the City as required and shall consist of the following annual estimated quantities:

- Asphalt on granular road restoration – 35,000 square metres
- Exposed concrete and asphalt on concrete road restoration – 180 square metres
- Concrete sidewalk, driveway and walkway restoration – 10,300 square metres
- Concrete curb restoration on local and arterial roads – 1,100 linear metres
- Asphalt driveway restoration – 3,100 square metres
- Supply and placement of topsoil and sod – 4,000 square metres
- Supply and placement of topsoil and seed – 3,000 square metres
- Cold weather placement and protection of concrete – 4,800 square metres

	Year 3 Final 2020
Road Restoration	34,138.13
Concrete Sidewalk/Driveway/Walkway	15,345.39
Concrete Curb	1,309.00
Sod/Seed	4,033.52

Commendations On APM's Performance

“APM's Performance on this project has grown to a point that your group is now setting the bar which other were not able to achieve”

City Of Hamilton Restorations Project Manager 2015

“This is exactly the Performance the city needs in order to deliver this contract, and I can honestly say this is the best state the program has been in since I have been managing this contract”

City Of Hamilton Restorations Project Manager 2018

“Over the past year [APM's project manager's name] consistent focus on these skills has allowed him to effectively manage and improve the road cuts program

City Of Hamilton Restorations Project Manager 2020



Submitted on Wednesday, November 3, 2021 - 11:33am Submitted by anonymous user: 172.70.126.90 Submitted values are:

==Committee Requested==

Committee: Audit, Finance & Administration Committee

==Requestor Information==

Name of Individual: Max Warmuth

Name of Organization: Garda Canada Security Corporation "GardaWorld"

Contact Number: 416-272-9365

Email Address: max.warmuth@garda.com

Mailing Address:

GardaWorld

54 Centennial Parkway North

Suite 200

Hamilton, ON

L8E 1H6

Reason(s) for delegation request: GardaWorld is presently banned from doing business with the City of Hamilton due to an active litigation between the City and Primary Response Inc, a security company that was acquired by GardaWorld in January of 2018. The issue that precipitated the claim by the City occurred prior to this acquisition, and as such is being handled by the insurance company for the previous owners of Primary Response. As the largest security provider in Hamilton, we seek consideration to have this ban lifted so GardaWorld can once again bid on City contracts. We believe we can offer the City a superior value proposition through our size, scale, and local capability.

Will you be requesting funds from the City? No

Will you be submitting a formal presentation? No



Hamilton

Procurement Sub-Committee

REPORT 21-001

9:30 am

Friday, October 29th, 2021

Council Chambers

Hamilton City Hall

71 Main Street West

Present: Councillors L. Ferguson (Chair), J.P. Danko (Vice-Chair), and N. Nann

Absent: Councillor T. Whitehead - Personal

THE PROCUREMENT SUB-COMMITTEE PRESENTS REPORT 21-001 AND RESPECTFULLY RECOMMENDS:

1. **Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. (FCS21102 / LS21044 / PW21064) (City Wide) (Item 14.2)**
 - (a) That the directions provided to staff in Closed Session, be approved;
 - (b) That Closed Session recommendations be released publicly following approval by Council; and,
 - (c) That the contents of Report FCS21102 / LS21044 / PW21064, Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. and the attached Appendix remain confidential.

2. **Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances (FCS21103 / LS21045) (City Wide) (Item 14.3)**
 - (a) That the directions provided to staff in Closed Session, be approved;
 - (b) That Confidential Appendix A to Report FCS21103 / LS21045, Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances, **as amended**, be released when the by-law is for consideration at Council; and,
 - (c) That the contents of Report FCS21103 / LS21045, Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances remain confidential.

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 2)

The Committee Clerk advised of the following changes to the agenda:

6. COMMUNICATIONS

- 5.1 Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd.

Recommendation: Be received and referred to consideration of Item 6.1.

6. DELEGATION REQUESTS

- 6.1 Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2 (For today's meeting)

The agenda for the October 29, 2021 Procurement Sub-Committee meeting was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 3)

There were no declarations of interest.

(c) MINUTES (Item 4)

(i) October 1, 2020

The Procurement Sub-Committee Minutes of the October 1, 2020 Meeting were approved, as presented.

(d) COMMUNICATIONS (Item 5)

(i) Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd. (Added Item 5.1)

The Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd. was received and referred to the consideration of Item 6.1.

(e) DELEGATION REQUESTS (Item 6)

- (i) Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2 (For today's meeting) (Added Item 6.1)**

The delegation request from Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2, was approved for today's meeting.

(f) PUBLIC HEARINGS/DELEGATIONS (Item 9)

- (i) Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2 (Added Item 9.1)**

Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., addressed the Committee respecting Item 14.2.

The delegates were granted an additional five minutes for their delegation.

The delegation from Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2, was received.

(g) PRIVATE AND CONFIDENTIAL (Item 14)

- (i) Closed Minutes – October 1, 2020 (Item 14.1)**

(a) The Closed Session Minutes of the October 1, 2020 Procurement Sub-Committee meeting, were approved as presented; and,

(b) The Closed Session Minutes of the October 1, 2020 Procurement Sub-Committee meeting remain confidential.

Committee moved into Closed Session, respecting Items 14.2 and 14.3 pursuant to Section 9.1, Sub-sections (f), (i) and (k) of the City's Procedural By-law 21-021, as amended, and Section 239(2), Sub-sections (f), (i) and (k) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the

municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization; and a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

(ii) Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. (FCS21102 / LS21044 / PW21064) (City Wide) (Item 14.2)

Staff was provided direction in Closed Session.

For disposition of this matter, refer to Item 1.

(iii) Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances (FCS21103 / LS21045) (City Wide) (Item 14.3)

Staff was provided direction in Closed Session.

For disposition of this matter, refer to Item 2.

(h) ADJOURNMENT (Item 15)

There being no further business the Procurement Sub-Committee adjourned at 10:58 a.m.

Respectfully submitted,

Lloyd Ferguson, Chair
Procurement Sub-Committee

Angela McRae
Legislative Coordinator
Office of the City Clerk