

Hamilton City Hall
Audit, Finance and Administration Committee
71 Main Street West
Hamilton, Ontario
L8P 4Y5

October 20, 2020

RE: Fair Wage Complaint # (FW26-2017)

Mr. Chair and members of the Audit, Finance & Administration Committee,

Network Sewer and Watermain Ltd. appreciates your time in considering this delegation, and requests that you kindly consider the two attached appendices regarding the audit for Fair Wage Complaint # (FW26-2017).

I intend to provide a 5 minute oral delegation following your review of this written submission, upon which time I will welcome your questions. Please note if the council elects to permit Network a proper appeal pursuant to Section 12 of the Fair Wage Policy, then I will forego my 5 minute oral delegation.

Many thanks for your consideration,

Kenneth Ukrainec
Counsel
Network Sewer & Watermain Ltd.
LSO # 78516L
Cell #

APPENDIX “A” - TIMELINE

❖ March 29, 2017 to December 2, 2017

Work on site for contract C15-56-16 (HSW) – Upper Sherman Road Reconstruction, commenced March 19, 2017, completed December 2, 2017.

❖ February 21, 2018

- Network formally notified of audit.

❖ February 22, 2018 to August 20, 2019

- Preliminary considerations and then audit commences.

❖ August 21, 2019

- Letter from City informing Network that final conclusion of the audit resulted in \$20,247.95 of unpaid wages.

❖ August 30, 2019

- Letter from Networks counsel in response to August 21, 2019 letter, specifically stating that
 - The audit miscalculated wages by failing to properly classify students; and
 - The audit significantly miscalculated overtime, as it did not take note of the Employment Standards Act exception for road workers, pursuant to O Reg 285/01.

❖ January 29, 2020

- Letter from City informing that revised audit now determines Network only owes \$593.60.

❖ February 5, 2020

- Letter from Network counsel in response to January 29, 2020 letter.

❖ February 27, 2020

- Meeting between Network and relevant City officials. Parties discuss disputed calculations, and Network makes clear that certain staff members changed job titles during project, resulting in differing wage rates which the City’s auditor should have considered.

❖ March 18, 2020

- Network provides the City with the relevant date for each employee’s changed job title.

❖ July 13, 2020

- Email from city informing that revised audit now determines Network only owes \$349.62.

❖ July 22, 2020

- The City requests a response from Network in regard to the revised audit figure, Network’s counsel provides a letter in opposition, stating the following:
 - Network’s alleged miscalculations were clearly inadvertent and modest enough so as to be within a de minimis range, thereby Network requests to pay the employees and have the City waive any further penalties; and
 - In the event that the City does not wish to waive further penalties, then Network requests a meeting with the City’s Manager of Procurement.

APPENDIX “A” - TIMELINE

❖ **August 12, 2020**

- The City’s Manager of Procurement sends an email to Network, instructing that Network’s July 22, 2020 letter was unilaterally elevated to a higher level of appeal, and the GM of Corporate Services and the GM of Public Works have unilaterally determined that the audit was correct and that Network is in a state of non-compliance. The letter did not provide specific details.

❖ **August 20, 2020**

- City sends out letter discussing actions moving forward, specifically stating (underlining added for emphasis):
 - *“the City will be requesting payment from Network for the minimum cost of the investigation in the amount of \$5000.00 (plus applicable tax).”*

❖ **September 9 to October 7, 2020**

- Letters back and forth between parties confirming whether payments have been made to date.
- All payment acknowledgement forms submitted to City, City responses in return, forms resolved.

❖ **October 7, 2020**

- City provides invoice for audit, amounting to \$9,197.26.

APPENDIX “B” - DELEGATION SUBMISSIONS

1. Section 12 Fair Wage Policy: Procedural Fairness

- 1.1. In the final decision made by the City of Hamilton (“City”) in its June 2020 email, Network Sewer and Watermain Ltd. (“Network”) was not provided with procedural fairness, pursuant to Section 12 of the Fair Wage Policy (“FWP”).
- 1.2. Specifically, counsel for Network requested a meeting with the Manager of Procurement in accordance with Section 12.1. Instead of attending said meeting, Network received an email from the Manager of Procurement, stating that she unilaterally elevated Network’s appeal to the GM of Corporate Services and the GM of Public Works. The particulars of the elevated decision were not provided to Network, though the revised final audit figure was confirmed.
- 1.3. **For ease of reference, the August 12, 2020 letter is hereby attached as “Exhibit A”.**
- 1.4. This lack of procedural fairness has limited the transparency that Network should have been provided in the appeals process. At this time Network requests, pursuant to Section 12 of the FWP, that it be granted a proper meeting with the City to address the remaining issues at hand, including those discussed in this letter. If the council decides such a meeting should be granted to Network, then I will forego my oral delegation at this time.

2. Audit Requiring Further Revision, Diminished Reliability

- 2.1. The multiple revisions to the audit have only occurred because Network has successfully challenged the audit’s significant miscalculations, which has led to a more than 99% reduction to the final audit figure. In addition to the continual revisions over the past 2.5 years, Network has once again found the most recent figure provided by the City to be in error.
- 2.2. Specifically, the total hourly wages for “Mr. DF” in the weeks prior to his holiday payments appear overvalued by the City’s auditor in TAB 3. When manually applying Mr. DF’s weekly totals for the 4 week period prior to the 2 holidays in question (TAB 1), then the total figures result in a lower combined total of \$341.40, not the \$520.66 prescribed by the City’s auditor in TAB 3. When taking into account the relevant overpayments to “Mr. DF”, this number is reduced to a significantly lower outstanding total of \$87.74. It is relevant to note that Network has recently paid “Mr. DF” the previously calculated \$267.00, as per the City’s direction provided on October 3, 2020.
- 2.3. Due to the constantly changing revisions, Network is justified in questioning the reliability of the audit’s final figures. The fact that this audit continues to require revisions seriously undermines the credibility of any of the numbers provided.
- 2.4. If the City believes that the TAB 3 calculations provided by the City’s auditor are correct, then it should only be fair for Network to be provided with some type of reasoning to justify this conclusion.

3. Grossly Disproportionate and Inequitable Penalties

- 3.1. When considering the alleged minor accounting discrepancies, which Network continues to dispute, it is submitted that the penalties being imposed in these circumstances be considered grossly disproportionate and inequitable.

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3.2. In determining whether the penalties imposed are grossly disproportionate and inequitable, Network submits that the counsel consider Network’s overall intent to comply with the FWP, the scale of the alleged infraction, and the audit’s diminished reliability.

3.3. **Intent**

3.3.1. Network submits that the councillors should consider Network’s intent to comply with the FWP when determining whether Network should be subject to penalty.

3.3.2. To date, the City’s auditor has been proven to have miscalculated Network’s final amount owing on three separate occasions, and Network continues to dispute the most recent final figure. If anything, the continual accounting errors shown by the City’s auditor go to show how minor accounting discrepancies can arise, despite a party’s best efforts and proper intentions. As a result, in this instance it is unreasonable to penalize Network.

3.3.3. As an additional consideration, the councillors should contrast the alleged minor accounting discrepancies with Network’s overall intention to pay its employees at a rate well above the standards set by the FWP. As can be seen in the audit, Network has exceeded the FWP wage rate standards by more than \$46,000.00 during the project in question. If Network was at all intent on avoiding compliance with the FWP, then they would not have consistently volunteered to exceed the FWP’s standards by such a significant margin.

3.4. **Scale**

1. According to Network’s most recent calculations, the audit’s final figure accounts for approximately 0.039% of the total wages paid to employees over the course of the project. This minor figure should be considered modest enough so as to be de minimis in nature, and thereby should not result in Network being subject to the significant penalty commonly imposed with by the FWP.

3.5. **Consistently Unreliable Audit**

2. As described in paragraph 2 above, the audit’s final figures have suffered continual and ongoing miscalculations. As a result, it is very reasonable for Network to call into question how any future revised figures provided from this audit can be relied upon when considering whether to impose a penalty on Network.

4. Audit Cost Raised Without Explanation

4.1. The City provided a letter to Network on August 20, 2020, which states the following (underlining added for emphasis):

“... the City will be requesting payment from Network for the minimum cost of the investigation in the amount of \$5,000.00 (plus applicable tax).”

4.2. **For ease of reference, the August 20, 2020 letter is hereby attached as “Exhibit B”.**

4.3. To date, Network has not been provided with an explanation as to why the invoice provided by the City on October 7, 2020 is for \$9,197.26, almost double the cost declared only a month and a half prior. Additionally, Network takes issue with the possibility that they are being charged for the audit’s revised results. It is important to note that the revised audits only occurred because

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Network successfully disputed the significant miscalculations. Network hereby submits that this unexplained increase be deemed inequitable.

- 4.4. Upon recent review of the Audit, Finance and Administration Committee Agenda for October 22, 2020, Network has noted on page 15 that the City is only requesting the minimum \$5000.00. As a result, Network is seeking clarification on the City’s position.

5. Conclusion

- 5.1. In consideration of the circumstances prescribed above, Network requests that the City declare the following:
 - 5.1.1. Network should only be subject to pay for the alleged outstanding amounts owed to the employees in question; and
 - 5.1.2. That any further penalty typically imposed pursuant to the FWP be waived for Network in this instance.

EXHIBIT “A”

Gabriela Medeiros

From: Iacoe, Tina <Tina.Iacoe@hamilton.ca>
Sent: Wednesday, August 12, 2020 3:31 PM
To: Don Medeiros
Cc: Gabriela Medeiros; Sandra Sousa; Vasquez, Patricia; Male, Rick; McKinnon, Dan; Zegarac, Mike
Subject: RE: City of Hamilton FW26-2017 (C15-56-16 Upper Sherman Road Reconstruction)
Attachments: Network Sewer and Watermain - Fair Wage Audit

Good afternoon Don.

I am in receipt of your lawyer's letter to Patricia Vasquez regarding the City's most recent correspondence on the Fair Wage Audit of Contract C15-56-16.

As per the Fair Wage Policy, I have escalated your request for an appeal on this compliant to the applicable General Managers. Both Mike Zegarac, GM of Corporate Service's and Dan McKinnon, GM of Public Works, have made the final decision regarding the outcome of this Fair Wage complaint process and both agree with the findings of the City's auditor. Therefore Network Water and Sewer has been found to be non-compliant with the City's Fair Wage Policy.

For your information, staff are required to present an annual report to the Audit, Finance and Administration Committee of Council regarding complaints investigated and resulting audits performed pursuant to the Fair Wage Policy and Fair Wage Schedule. It is my expectation that this report will be brought to Committee during the fourth quarter of 2020. Should you choose delegate to the Committee regarding this compliant and your appeal, I would recommend that you contact the City Clerk's office for assistance to do so.

Patricia will be in touch with Network should we need anything further to close out this file. Thank you.

Tina Iacoe CPPO, CPPB
Manager of Procurement
City of Hamilton
9th Floor, 120 King Street West
Hamilton, ON L8P 4V2
905-546-2424, ext 2796

EXHIBIT “B”

Gabriela Medeiros

From: Vasquez, Patricia <Patricia.Vasquez@hamilton.ca>
Sent: Thursday, August 20, 2020 11:32 AM
To: Don Medeiros
Subject: FW 26-2017 (Upper Sherman Road Reconstruction)
Attachments: Non-Compliance Letter - Network.pdf

Importance: High

Good afternoon,

Please refer to the attached letter which outlines the non-compliance and actions moving forward regarding the Fair Wage review on Contract C15-56-16 – Upper Sherman Road Reconstruction.

Please contact me if you have any questions.

Regards,

Patricia Vasquez
Senior Procurement Specialist
Corporate Services Department
Procurement Section
City of Hamilton

120 King Street West, Suite 900
Hamilton, Ontario L8P 4V2
Tel: (905) 546-2424 Ext. 5972
Email: Patricia.Vasquez@hamilton.ca



Patricia Vasquez
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Financial Services Division
Phone: (905) 546-2424, Ext. 5972
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August 20, 2020

Network Sewer and Watermain Ltd.
510 Collier MacMillan Drive
Cambridge, ON N1R 6R5
Attn: Don Medeiros, President

Sent by email: DMedeiros@nswltd.ca

Subject: Fair Wage Complaint No. FW 26-2017
Contract No. C15-56-16
Upper Sherman Road Reconstruction

Dear Mr. Medeiros,

Upon completion of the audit on Network Sewer and Watermain Ltd. ("Network"), Network has been deemed to be non-compliant with the City of Hamilton's Fair Wage Policy and Schedule per the following:

- Employees received a compensation package less than the Total Hourly Compensation as set out in the Fair Wage Schedule while working on contract C15-56-16, as noted in the audit results.

In accordance with the Fair Wage Policy Section 10 - Consequences of Non-compliance, the City is proceeding as follows:

1. Per 10.1, (a), the City is requesting completed and signed 'Receipt of Payment Acknowledgement' forms by each employee listed in the audit results and proof of payment (i.e. copy of issued cheques) to be provided by **September 3, 2020**. The completed forms and proof of payment must be directly emailed to patricia.vasquez@hamilton.ca.
2. Per 10.1, (c), the City will be requesting payment from Network for the minimum cost of the investigation in the amount of \$5,000.00 (plus applicable tax). The City will be issuing an invoice for this cost to be mailed to Network.

If the above requested actions are not completed, the City reserves the right to exercise item 10.2 or 10.3 as per Section 10 - Consequences of Non-compliance.

If you have any questions or concerns regarding any of the above, please contact me via email at Patricia.Vasquez@hamilton.ca.

Sincerely,

Patricia Vasquez,
Senior Procurement Specialist

Encl. Receipt of Payment Acknowledgement Form

Receipt of Payment Acknowledgement Form

I, _____(Individual's Name), confirm that I have received the following payment(s) from Network Sewer and Watermain Ltd., which represent(s) the shortfall in payment(s) previously received while working on the City of Hamilton **Contract No. C15-56-16** for the **Upper Sherman Road Reconstruction**.

Regular Pay: \$

Over Time Pay: \$ _____

Total received: \$

Signed: _____

(Individual's Signature)

Dated : _____