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October 27, 2021

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DELIVERED BY EMAIL

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City Hall, City of Hamilton
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Hamilton, ON L8P 4Y5
clerk@hamilton.ca

Ms. Susan Nicholson
City of Hamilton
Legal Services
50 Main Street East, 4th Floor
Hamilton, ON L8N 1E9
Susan.Nicholson@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")
Request for Adjournment**

I have been retained as counsel for Associated Paving with respect to the above-noted matter. I am attaching a copy of the City's Recommendation Letter for your reference. My client has also been represented in this matter by Mr. Roger Campbell and I have reviewed Mr. Campbell's correspondence to you dated September 3, 2021, together with enclosures. Mr. Campbell is copied on this letter.

It is my understanding that the City staff and Manager of Procurement will be presenting a report to the City's Procurement Sub-Committee this Friday, October 29, 2021, in which a recommendation will be made that the City impose an interim ban on my client bidding for and entering into road cut restoration work contracts. I am also advised that my client has been provided with the opportunity to make a five minute submission to the Procurement Sub-Committee on the same date, to speak to this recommendation, even though it will not be provided with the opportunity to see or review the report itself.

While my client fully disputes both the recommendation and the purported basis for it, I am respectfully writing to you about process at this time. My client has been performing work for the City for years. The



specific road cut restoration work contract at issue was entered into in 2017 (the “**Current Contract**”). My client has been expressly commended by the City for its performance and the Current Contract has been repeatedly renewed on an annual basis - to its maximum term. The structure of the Current Contract is such that neither my client nor the City knows the actual quantities of work to be performed at the outset. However, my client is expected to have the necessary resources available to complete the work on a real-time basis and within a short timeframe, even where the actual quantities vastly exceed the City’s own estimates (which I understand has regularly occurred). The purpose of providing this simplified overview is to emphasize that the issues are complex and records go back several years. Moreover, my client does not have access to the same documents that are available to the City. In anticipation of the pending Procurement Sub-Committee meeting, my client submitted a request to the Manager of Procurement on October 22, 2021 for a copy of the records upon which the October 19th Recommendation Letter is based. Just before 5 p.m. on October 26, 2021, or two days before the Procurement Sub-Committee meeting, my client was provided with a 7 MB zipfile containing an additional 38 documents for its review, including meeting minutes that I am advised were not previously provided to it.

In accordance with the process outlined in the Recommendation Letter, we have submitted a Request to Speak to a Committee of Council through the City’s website portal. Within that request, we have asked that this matter be adjourned to another date so that my client will have a fair opportunity to make fulsome written and oral submissions. In submitting this request, we would ask you to please consider that: (i) my client has invested in substantial resources to carry out this work; (ii) the decision of the Procurement Sub-Committee will have a meaningful and substantial impact upon my client’s business; (iii) as noted above, the Current Contract has been repeatedly renewed, accompanied by express compliments from the City to my client for its work; (iv) the issues are complex and involve voluminous documents, many of which my client is reviewing for the first time; and (v) despite the issues that have been alleged, it was just confirmed on October 25, 2021 that my client has been prequalified by the City to bid for Contract C14-12-21 for the performance of permanent restoration of pavement cuts.

Particularly given the serious potential impact of this matter, the long-term investment my client has made in this longstanding and valued relationship and the complexity of the issues, we respectfully request that an adjournment of the consideration of this matter is granted so that my client has sufficient time to fully and properly address these matters in a fair process in which it will also have access to informed advice based upon the available records.

Thank you for your consideration of this matter. Given the very tight timing, I would be grateful for a response at your earliest convenience.

Sincerely,
DLA Piper (Canada) LLP
Per:

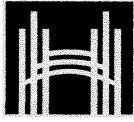
A handwritten signature in blue ink, appearing to read 'HDK', with a long horizontal flourish extending to the right.

Howard D. Krupat

HDK:cwr

c: Roger Campbell
Marco Capobianco
Stan Capobianco

Enclosure



Hamilton

Tina Iacoe, CPPO, CPPB
Manager of Procurement
Procurement Section
Finance Division
Phone (905) 546-2424 Ext. 2796 E-mail Tina.Iacoe@hamilton.ca

October 19, 2021

Sent by Email: stan@associatedpaving.com
Sent by Courier

Associated Paving & Materials Ltd.
5365 Munro Court
Burlington, ON
L7L 5M7

Attention: Stan Capobianco

Re: Commercial Relationship between the City of Hamilton and Associated Paving & Materials Ltd. ("Associated Paving")

Dear Mr. Capobianco:

As you are aware, Associated Paving & Materials Ltd. ("Associated Paving") was awarded C15-71-17(H) Prequalified Contractors for Permanent Restoration of Pavement Cuts in Asphalt and Concrete Pavements ("Contract") in September, 2017. Since that time, and more specifically since November 19, 2020, City staff has experienced some vendor performance issues with Associated Paving on this Contract, and as a result, issued a number of Policy #8 Vendor Performance reports and one Vendor Performance - Incident Reporting Forms to Associated Paving pertaining to the Contract, detailing unsatisfactory vendor performance and non-performance, as well as missed completion dates and deficiencies in meeting specifications as set out in the Contract.

The City of Hamilton's By-law No. 20-205, Procurement Policy By-law, Policy #1 – Vendor Eligibility, Section 4.1 states, in part, the following:

"(10) Where the Manager of Procurement has demonstrated and the Procurement Sub-Committee is satisfied that there is sufficient evidence of act(s) or omission(s) described in this Policy #1 on the part of a vendor, the Procurement Sub-Committee may impose an interim ban upon the vendor from competing or being awarded any City Contract, under the following circumstances:

- (a) *while an investigation is being conducted by the Manager of Procurement;*
- (b) *while there is documented poor performance or non-performance that has not been resolved to the City's satisfaction and which has impaired the commercial relationship between the City and the vendor such that the vendor ought to be precluded from submitting bids on other contracts until the vendor performance issues have been rectified; or*
- (c) *when a vendor has been found to be in breach of a City Contract and which breach has impaired the commercial relationship between the City and the vendor such that an interim ban is necessary in order to preclude the vendor from submitting bids on other contracts pending Litigation or a final ban.*

The interim ban may be imposed for a period of up to 12 months. The Procurement Sub-Committee's decision shall be final with respect to the interim ban.

- (11) *Where an interim ban is imposed under subsection (10), the Manager of Procurement shall, prior to the expiry of the interim ban, report to the appropriate standing committee of Council the status of the investigation and any recommendations for further action."*

The full text of the City's Procurement Policy By-law can be found on the City's website: www.hamilton.ca

Given the issues described above, it is the view of City staff that the commercial relationship between the City and Associated Paving has been impaired. Accordingly 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 staff report will be considered by the City's Procurement Sub-Committee on **Friday, October 29, 2021**. Should you wish to speak to the Sub-Committee regarding the commercial relationship between the City and Associated Paving and the potential prohibition from bidding or entering into contracts on City projects, you may do so for a maximum of five minutes or such longer period of time, as may be granted by the Sub-Committee in its sole discretion, provided that you submit a Request to Speak to a Committee of Council as soon as possible but in any event, by no later than noon on Thursday, October 28, 2021. Please submit the Request to Speak to a Committee of Council form on-line. A link to the Request Form can be found on the City of Hamilton's website at:

<https://www.hamilton.ca/council-committee/council-committee-meetings/request-speak-committee-council>

Please note that should you wish to speak to the Procurement Sub-Committee, your presentation will be conducted in public session. However, the staff report related to your company is a confidential report which will be considered by Procurement Sub-Committee in closed session. You will not be able to attend the closed session portion of the Procurement Sub-Committee meeting.

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

If you have any questions or concerns regarding the above, please feel free to contact me at tina.iacoe@hamilton.ca

Sincerely,

A handwritten signature in black ink, appearing to read 'Tina Iacoe', with a large, stylized initial 'T'.

Tina Iacoe, CPPO, CPPB
Manager of Procurement