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November 3, 2021

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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.



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 'HDK', with a long horizontal flourish extending to the right.

Howard D. Krupat

HDK:

c: Roger Campbell
Marco Capobianco
Stan Capobianco