AFFECTS
WARDS 3 & 4

CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Operations & Maintenance Division

Report to: Chair and Members
Public Works Committee
Submitted by: Scott Stewart, C.E.T.
General Manager
Public Works Department

Date: May 16, 2008
Prepared by: Ramona Dechert
Extension 7896

SUBJECT: ArcelorMittal Dofasco Inc. Truck Route Rehabilitation and
Resurfacing Agreement (PW08066) - (Wards 3 and 4)

RECOMMENDATION:

(a) That the City enter into a further twenty year agreement with ArcelorMittal Dofasco Inc. ("Dofasco"), permitting Dofasco to transport heavy loads over designated routes on certain City roads, in accordance with the provisions set out in Table A of Report PW08066;

(b) That the Mayor and City Clerk be authorized to execute the Agreement in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY:

The term of the current twenty-year agreement with Dofasco expired on December 31, 2007. In adopting Item 14 (Report LS07006) of Public Works Committee Report 07-008, approved by Council on May 30, 2007, the agreement was extended for a further six-month period to June 30, 2008. Staff was also directed to enter into negotiations with Dofasco for another long term agreement prior to the expiry of the extended agreement.

The current agreement permits Dofasco to transport super heavy loads of steel products over designated routes on certain City streets adjacent to its complex. In
return, Dofasco has agreed to compensate the City for the additional maintenance and construction costs incurred as a result of its extraordinary use of these roads.

As a result of Council direction, and through discussions between City staff and Dofasco representatives, an agreement has been reached between the parties, subject to Council approval.

The major provisions of the existing agreement and proposed agreement, as well as the rationale for the changes are set out in Table A in this report. Substantive changes to the agreement reduce Dofasco’s contribution for road rehabilitation and resurfacing work to 34% from 43%, increase Dofasco’s contribution towards an annual condition assessment report to 100% from 50%, and add an annual administration fee. Other changes are intended to bring the agreement in line and up to date with current standards and practices and anticipate future needs, to the extent possible, in order to accommodate the long term nature of the agreement. The changes set out in Table A are agreeable to Dofasco.

**BACKGROUND:**

The information/recommendations contained within this report primarily affect Wards 3 and 4.

Since 1970, the City of Hamilton, the Regional Municipality of Hamilton-Wentworth and Dofasco Inc. have mutually agreed that Dofasco may transport super heavy loads of steel products over designated portions of municipal streets adjacent to Dofasco's manufacturing complex in return for a defined contribution from Dofasco towards the extraordinary construction, re-construction and maintenance costs on these designated routes resulting from this exceptional use.

The term of the current twenty-year agreement with Dofasco expired on December 31, 2007. In adopting Item 14 (Report LS07006) of Public Works Committee Report 07-008, approved by Council on May 30, 2007, the agreement was extended for a further six-month period to June 30, 2008. Staff was also directed to enter into negotiations with Dofasco for another long term agreement prior to the expiry of the extended agreement.

Dofasco requires an annual permit from the Province of Ontario to allow it to transport loads in excess of those permitted under the *Highway Traffic Act* and Regulations over the public highway system. In order to get such a permit, Dofasco is required to demonstrate to the Province that it has an agreement with the appropriate municipal road authority, the City of Hamilton, providing for such use. Entering into this new long term agreement to replace the agreement expiring on June 30, 2008, will satisfy the Ministry on an ongoing basis that Dofasco has an agreement in place with the appropriate municipal road authority.

As a result of Council direction, and through discussions between City staff and Dofasco representatives, an agreement has been reached between the parties, subject to Council approval.
ANALYSIS/RATIONALE:

The major provisions of the existing agreement and proposed agreement, as well as the rationale for the changes are set out in Table A. In addition to a number of substantive changes, other changes are intended to bring the agreement in line and up to date with current standards and practices and anticipate future needs, to the extent possible, in order to accommodate the long term nature of the agreement. The changes set out in Table A are agreeable to Dofasco.

**TABLE A**

**MAJOR PROVISIONS AND RATIONALE**

<table>
<thead>
<tr>
<th>Major Provisions</th>
<th>Existing Agreement</th>
<th>Proposed Agreement</th>
<th>Rationale for Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term</td>
<td>Twenty years&lt;br&gt;January 1, 1988 to December 31, 2007 (extended to June 30, 2008)</td>
<td>Twenty years&lt;br&gt;July 1, 2008 to June 30, 2028</td>
<td>n/a</td>
</tr>
<tr>
<td>Termination</td>
<td>No provision</td>
<td>City’s right to terminate agreement with 60 days notice to remedy breach</td>
<td>Enforcement provision</td>
</tr>
<tr>
<td>Vehicles</td>
<td>Eleven types</td>
<td>Five types</td>
<td>Updated to reflect Dofasco’s operation</td>
</tr>
<tr>
<td>Routes</td>
<td>Kenilworth Avenue Route and Ottawa Street route (see Note 1 - Appendix “A” in Report PW08066)</td>
<td>No change</td>
<td>n/a</td>
</tr>
<tr>
<td>Route Disruptions</td>
<td>City to determine alternate route and report on initial condition.&lt;br&gt;Dofasco to repair any resulting damage and restore to normal standard</td>
<td>No change</td>
<td>n/a</td>
</tr>
<tr>
<td>Overload Permits</td>
<td>City to issue at no charge to Dofasco</td>
<td>City to issue if required to do so in the future, at Dofasco’s cost</td>
<td>City does not currently have jurisdiction to issue permits for vehicles with these weights but may be asked to do so in future. Cost would be Dofasco’s to bear.</td>
</tr>
<tr>
<td>MTO Permits</td>
<td>No provision</td>
<td>MTO issues, Dofasco to pay for</td>
<td>Updated to reflect current practice</td>
</tr>
<tr>
<td>Major Provisions</td>
<td>Existing Agreement</td>
<td>Proposed Agreement</td>
<td>Rationale for Change</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Annual Condition Assessment Report</td>
<td>City - 50% cost Dofasco - 50% cost Consultant: Mutually agreed upon by all parties</td>
<td>City - 0% cost Dofasco - 100% cost Consultant: Stantec first choice, then upon mutual agreement, then arbitration</td>
<td>Annual Condition Assessment Report required only on these routes and directly as a result of the heavy loads, therefore, total cost is Dofasco’s to bear. As Dofasco is now paying 100% of the cost, it wanted a greater degree of say in the engineering firm chosen, specifically choosing Stantec. Stantec is agreeable to both parties.</td>
</tr>
<tr>
<td>Payment for Rehabilitation and/or Resurfacing Work</td>
<td>City - 57% cost Dofasco - 43% cost</td>
<td>City - 66% cost Dofasco - 34% cost</td>
<td>Updated calculation based on weight engineer assessment (see Note 2)</td>
</tr>
<tr>
<td>Payment for Rehabilitation and/or Resurfacing Work (portion re exclusive use of roadway)</td>
<td>City - 0% cost Dofasco - 100%</td>
<td>No change</td>
<td>n/a</td>
</tr>
<tr>
<td>Annual Administration Fee</td>
<td>No provision</td>
<td>$1,700 annually paid by Dofasco</td>
<td>One time renewal cost plus annual administration fee, amortized over term of the agreement for consistent invoicing</td>
</tr>
<tr>
<td>Insurance</td>
<td>$2M auto liability; various other</td>
<td>$10M per occurrence commercial liability; $10M coverage auto liability; $2M per occurrence non owned auto liability; and various other terms</td>
<td>Updated terms to reflect current industry standards and City requirements and anticipating Future needs</td>
</tr>
<tr>
<td>Arbitration</td>
<td>No provision</td>
<td>Single arbitrator, to be held in the City, otherwise as provided for in the Arbitration Act</td>
<td>Dispute resolution mechanism missing from current agreement</td>
</tr>
<tr>
<td>Successors and Assigns</td>
<td>No provision</td>
<td>Agreement binding on successors and Dofasco to obtain consent prior to any assignment.</td>
<td>Provision missing from current agreement</td>
</tr>
<tr>
<td>Standard Legal Provisions</td>
<td>Various</td>
<td>Various</td>
<td>Updated terms to reflect current language</td>
</tr>
</tbody>
</table>
Note 1 - Routes (Appendix A)

Kenilworth Avenue Route - commencing on Kenilworth Avenue North from Dofasco's plant entrance north of Burlington Street, south on Kenilworth Avenue to Beach Road, west on Beach Road to Ottawa Street, south on Ottawa Street to the west leg of Beach Road to Gate number 3 and return.

Ottawa Street Route - commencing on Ottawa Street North from Dofasco's plant entrance north of Industrial Drive, south on Ottawa Street to the west leg of Beach Road to Gate number 3 and return.

Note 2 - Payment for Rehabilitation and/or Resurfacing Work

The current agreement requires Dofasco to contribute 43% of the cost of rehabilitation and resurfacing work. Neither Dofasco nor City staff were able to substantiate a proper basis for this calculation. Dofasco indicated that this percentage split had been arrived at by way of a simple three way split between the original parties to the agreement (the City, Region and Dofasco) with an additional 10% being added at one point in the City's favour as compensation by Dofasco for the work performed by the City in issuing permits for these vehicles (work which has long since been discontinued). No actual cost calculations were ever considered in arriving at this original compensation formula.

Given that software is now available with which to specifically calculate a true cost sharing formula - which would accurately report Dofasco’s share of costs for rehabilitation and resurfacing work conducted on the routes used by Dofasco vehicles to carry super heavy loads of steel products, City staff determined that it would be appropriate to review the cost sharing formula to determine its appropriateness for this agreement. The City’s consultant, Stantec, and Dofasco collaboratively used the technology to produce a result that would form a proper basis of calculation, be reproducible in future, and could be mutually supported by the parties. Benchmarking with other municipalities in similar conditions was considered but was not an option as the trucks and loads with which Dofasco operates are unique in Ontario.

The first task evaluated by the City’s consultant was the assessment of pavement structures previously used by the City. It was noted that the City’s conventional composite pavement design cannot support the Dofasco vehicles and it was confirmed that the heavy duty pavement structure utilized previously on Ottawa Street and Beach Road provided the desired thirty year life under loading for both Dofasco’s vehicles and conventional vehicles. The driving force behind this evaluation was the costing of the two different types of pavement structures used. That is, the estimated cost for the construction of heavy duty composite pavement is $165.47/m$^2$ whereas the estimated cost to construct the City of Hamilton’s conventional composite pavement is $109.21/m$^2$, leaving a difference of $56.26/m^2$, or 34% of the required heavy duty composite structure. With respect to maintenance, the calculation came in at a fraction more than 34% and was rounded down to 34% for consistency with the rehabilitation percentage for ease of administration.

ALTERNATIVES FOR CONSIDERATION:

Agreement renewal based on current formulae is an option but cannot be supported so is not recommended.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial Implications

<table>
<thead>
<tr>
<th>Item</th>
<th>Dofasco</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rehabilitation and/or Resurfacing Work</td>
<td>34% (was 43%)</td>
<td>66% (was 57%)</td>
</tr>
<tr>
<td>Annual Condition Assessment (Avg $6k)</td>
<td>100% (was 50%)</td>
<td>0% (was 50%)</td>
</tr>
<tr>
<td>Annual Administration Fee</td>
<td>$1,700 (was $0)</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Staffing and Legal Implications

None.

POLICIES AFFECTING PROPOSAL:

- Capital Budget
- Highway Traffic Act
- Municipal Act, 2001
- City of Hamilton Strategic Plan - A City that spends wisely and invests strategically.
- Public Works Strategic Plan - Mutually beneficial charters with external customers.

RELEVANT CONSULTATION:

- Public Works Department - Operations & Maintenance Division (Roads Operations & Maintenance, and Traffic Engineering & Operations); Capital Planning & Implementation Division (Asset Management, Surveys & Technical Services),
- Corporate Services (Finance & Administration, Financial Services - Revenues; Legal Services and Risk Management),
- Stantec Consulting Ltd.,
- Ward Councillors have been advised.

CITY STRATEGIC COMMITMENT:

By evaluating the "Triple Bottom Line", (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
A City that spends wisely and invests strategically.

Environmental Well-Being is enhanced. ☐ Yes ☑ No

Economic Well-Being is enhanced. ☑ Yes ☐ No
A City that spends wisely and invests strategically.

Does the option you are recommending create value across all three bottom lines?
☐ Yes ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes ☑ No