

December 6, 2016

To: Members
Finance & Administration Committee

Re: Western Potash Corp. – Payment Extension & Renegotiation of Agreement

RECOMMENDATION

1. That the Executive Director, Transportation and Utilities, be delegated authority to negotiate and resolve the terms and conditions of an amendment to the existing Water Access Agreement between the City of Regina and Western Potash Corp. (WPC) dated November 15, 2012 (the “Agreement”) as outlined in this report, including the following:
 - a. Providing an extension for WPC to provide payment of the required \$200,000 “stand-by fee” on or before December 31, 2016 to permit the 2017 stand-by fee to be provided on or before June 30, 2017.
2. That the City Clerk be authorized to execute the amended Agreement after review by the City Solicitor.
3. That the Executive Director, Transportation and Utilities, be authorized to negotiate a mutually beneficial amendment to the Agreement to create an opportunity to work with other potential mining operations to optimize the possibility for effluent reuse from the City of Regina’s (City) wastewater facilities and to maximize the potential financial return to the City.
4. That the Administration bring forward a report to City Council regarding the outcome of the negotiations with WPC on the potential for a mutually beneficial amendment to the Agreement and seeking City Council approval of any further amendments to the Agreement.
5. That this report be forwarded to the December 19, 2016 meeting of City Council for approval.

CONCLUSION

With the existing economic conditions in the potash industry and the potential for the City to provide treated effluent access to other commercial users, it is in the City’s interest to enter into discussions with WPC to see if the Agreement can be amended in a mutually beneficial fashion.

In order to provide for sufficient time to have productive negotiations, the Administration is recommending that an interim amendment to the Agreement be entered into with WPC wherein the City would agree to delay receipt of the upcoming \$200,000 stand-by fee payment that will become due on January 1, 2017 to become payable on June 30, 2017. This time will allow both parties to review the Agreement in the hope of negotiating mutually beneficial terms.

BACKGROUND

On November 15, 2012, the City and Western Potash Corp. (WPC) entered into a Water Access Agreement (the "Agreement") which would provide WPC with access to treated effluent for use in its potash solution mine near Milestone, Saskatchewan.

The key commercial terms of the Agreement, which were approved by City Council in CR 12-96 are attached in Appendix A to this report and include the following items:

- The term of Agreement is to supply treated effluent to WPC's mine for 45 years.
- The City will provide WPC with access for up to 60,000 cubic meters of recycled water per day for the first six years of mine operation (flow expected to begin 2016), and up to 42,240 cubic meter per day for the remaining 39 years of the Agreement.
- WPC paid to the City a commitment fee of \$500,000 upon execution of the Agreement. If WPC begins drawing treated effluent from the City prior to January 1, 2017, this \$500,000 fee is to be credited against the future annual fees WPC would incur for water access under the Agreement. If WPC fails to draw treated effluent prior to January 1, 2017, the \$500,000 commitment fee will be forfeited to the City.
- In addition to the \$500,000 commitment fee, if WPC is not drawing treated effluent from the City prior to January 1, 2017, it must pay an annual stand-by fee of \$200,000 for each year that water does not flow, up to and including 2019. Any stand-by fees paid by WPC to the City are non-refundable and are not credited against future fees under the Agreement.
- If WPC does not begin to draw treated effluent on or before December 31, 2019, the City has the option to terminate the Agreement and keep any commitment, connection and stand-by fees previously paid.
- WPC will own the water supply infrastructure, and be responsible for all capital costs associated with that infrastructure and any modification to existing City owned infrastructure that is necessary.

To date, WPC has not commenced construction of the required infrastructure to begin drawing treated effluent from the City and such activity is not expected to occur in the near future as WPC is in the process of re-scoping and adjusting the timing of its Milestone Potash Project due to the changing economics in the potash industry. It would therefore be in WPC's interests to renegotiate certain terms of the Agreement.

When the Agreement with WPC was negotiated and finalized, no other potential industrial or mining groups had approached the City with interest in its wastewater effluent. With the changing market conditions and other projects in Saskatchewan in development, there is the potential for the City to market this resource to other industrial or mining groups. In order to realize on the potential to market treated effluent to other users, it would be in the City's interest to renegotiate certain terms of the Agreement, as well.

DISCUSSION

In the four years that have passed since the Agreement was signed, the economics of the potash industry have changed dramatically. WPC has now re-scoped its Milestone Potash project and

has formally requested that the City revisit the following terms of the Agreement, in the hopes that the Agreement can be more economical for WPC's future mining plans:

- Optional termination date – If WPC does not draw treated effluent from the City on or before December 31, 2019, the City has the option to terminate the Agreement and keep any commitment, connection and stand-by fees previously paid by WPC. WPC is looking to extend the date upon which it would have to draw treated effluent and upon which the City's option to terminate would occur until December 31, 2024.
- Commitment Fees – WPC paid the City a \$500,000 commitment fee on signing the Agreement which is to be credited against the future fees WPC would incur for water access under the Agreement, if WPC draws treated effluent prior to January 1, 2017. WPC is looking to extend the date whereby the \$500,000 commitment fee amount is still credited against future fees WPC would incur for water access from January 1, 2017 to January 1, 2020.
- Annual Standby Fees – The Agreement currently provides for a payment of \$200,000 by WPC to be paid annually to the City to maintain the Agreement if WPC does not draw treated effluent from the City on or before January 1, 2017. WPC is looking to amend the Agreement to negate the requirement to pay annual stand-by fees or to reduce the payment required down from \$200,000.
- Maximum Daily Water Supply – WPC currently has access to up to 60,000 cubic meters of recycled water per day for the first six years of mine operation and up to 42,240 cubic meter per day for the remaining 39 years of the Agreement. WPC is looking to significantly reduce the City's commitment to provide the preferential right to access its wastewater effluent. This reduction could free up capacity for the City to pursue other commercial users of its wastewater effluent.

With the existing economic conditions in the potash industry and the potential for the City to provide treated effluent access to other commercial users, it is in the City's interest to enter into discussions with WPC to see if the Agreement can be amended in a mutually beneficial fashion. If the current Agreement is not reviewed, there is the potential that WPC would be unable or unwilling to meet the remaining terms of the Agreement, resulting in the loss of a potential future revenue source for the City.

In order to provide for sufficient time to have productive negotiations, the Administration is recommending that an interim amendment to the Agreement be entered into with WPC wherein the City would agree to delay receipt of the upcoming \$200,000 stand-by fee payment that will become due on January 1, 2017 to become payable on June 30, 2017. This time will allow both parties to review the Agreement in the hope of negotiating mutually beneficial terms.

Providing WPC with a revised Agreement is beneficial to the City for the following reasons:

- 1) Revised terms of treated effluent access will enable WPC to be successful in proceeding with construction of a potash solution mine, a mine which would provide a positive economic impact and job creation in the Regina region;

- 2) Revised terms with WPC would provide additional revenue for the City through the sale of treated effluent; and
- 3) Renegotiating the agreement with WPC to reduce the total amount of wastewater effluent required creates an opportunity for the City to enter into negotiations with other potential customers. The City produces approximately 65,000 – 70,000 cubic meters of wastewater effluent on an average day. The additional capacity freed up by renegotiating with WPC increases the opportunity to negotiate with other viable partners, which could lead to increased economic benefits for the City and the region.

Any further amendments to the Agreement would be brought back to Council for approval.

RECOMMENDATION IMPLICATIONS

Financial Implications

If the Agreement with WPC is amended, the potential revenue to the City will be decreased. However, current market conditions make it unlikely that the revenue contemplated in the original Agreement would be realized. By renegotiating, the City has an increased likelihood of an ongoing revenue source from the WPC and regains treated effluent capacity currently held by WPC that can be used to negotiate with other potential users.

Any potential revenue from this Agreement is not part of the current utility model and has not been included as a budget item.

Environmental Implications

This area of the Province has limited water resources; providing access to effluent for industrial use reduces the use of raw water from the water system. As well, by re-using effluent from the WWTP, less effluent enters Wascana Creek. An Environmental Assessment was completed by Western Potash and received Provincial approval in 2013.

Policy and/or Strategic Implications

The Administration's recommendation to enter into renegotiating the agreement with WPC is consistent with the City's Official Community Plan, as it will "minimize social and environmental impacts and improve the health and safety of the city and region", OCP Health and Safety Goal #2. As well, it will "foster an environment conducive to economic vitality and competitiveness which supports the standard of living of residents in Regina and the surrounding region", OCP Economic Development Goal #1.

Other Implications

None with respect to this report.

Accessibility Implications

None with respect to this report.

COMMUNICATIONS

A communications plan will be developed to explain any proposed changes to the agreement.

DELEGATED AUTHORITY

The recommendations contained in this report require City Council approval.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Pat Wilson', with a long horizontal flourish extending to the right.

Pat Wilson, Director
Water Works

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Karen Gasmu', written in a cursive style.

Karen Gasmu, Executive Director
Transportation & Utilities

Report prepared by:
Pat Wilson, Director, Water Works