

December 13, 2017

To: Members
Executive Committee

Re: Regina Wastewater Treatment Plant Upgrade Project – Project Update

RECOMMENDATION

1. That City Council authorize the City Manager or designate to negotiate and enter into an amendment to the Agreement to Design, Build, Finance, Operate and Maintain (the “Project Agreement”) for the Wastewater Treatment Plant (WWTP) upgrade project between the City of Regina (the “City”) and EPCOR Water Prairies Inc. (“EPCOR”) and any ancillary documents, to extend the period of time to achieve the 30-Day Performance Test and Final Completion. Such negotiation and amendment to the Project Agreement must require the following items:
 - a. EPCOR must achieve the performance standards for the 30-Day Performance Test as currently set out in the Project Agreement with only additional time being amended to meet this test;
 - b. EPCOR must achieve Final Completion within the time period of the extension for the 30-Day Performance Test;
 - c. the risk allocation within the Project Agreement is maintained and the City does not assume any additional risks because of the extension; and
 - d. EPCOR shall fully compensate the City for the City’s additional costs arising out of the extension period.

2. That this report be forwarded to the December 18, 2017 meeting of City Council for approval.

CONCLUSION

To date, the upgraded WWTP has met all environmental standards with much better effluent discharge quality than prior to the upgrade. The City’s relationship with downstream stakeholders has greatly improved through the stakeholders’ meetings with EPCOR and tours of the upgraded WWTP.

The 30-Day Performance Test (the Test) is designed to demonstrate the long-term capacity of the WWTP and must be completed by December 31, 2017. Granting the Administration the ability to negotiate an extension to the Test period is in the City’s best interest, as it allows EPCOR to demonstrate to the City that the WWTP meets the contractual required capacity set out in the

Project Agreement through the protective risk transfer structure within the Project Agreement.

The risk transfer within the Public-Private Partnership (P3) is effective as the City is receiving protection from risk and additional cost. The City will not incur any additional risk or cost because of the extension. Utility rates will not be impacted because of negotiating an extension.

BACKGROUND

On July 3, 2014, the City entered into the Project Agreement with EPCOR for the WWTP Upgrade Project.

The Project Agreement is the (P3) contract with commitments that bind the City and EPCOR to a commercial transaction that will result in EPCOR designing, building, financing, operating, and maintaining the WWTP for a 30-year period. Amongst many aspects, EPCOR and the City have agreed to the WWTP treatment standards, WWTP capacity, and a set fixed price for operations and maintenance of the WWTP, which are all stipulated in the Project Agreement.

The WWTP upgrade met Substantial Completion on December 31, 2016 with the conclusion of construction and routine performance testing. To date, the upgraded WWTP has met all environmental standards with much better effluent discharge quality than prior to the upgrade.

To fully verify that the City is receiving a WWTP that will meet future growth treatment capacity requirements, an intense 30-Day Performance Test was included in the Project Agreement. The Test is a very thorough stress test of the WWTP to the full constraints of the design to prove the WWTP can process wastewater at full capacity, while still maintaining treatment within the permit limits. The Test proves EPCOR built the WWTP to meet the capacity the City set in the technical requirements of the Project Agreement.

EPCOR provided the City with a \$25,000,000 Test Letter of Credit that is non-revocable and payable on demand if the Test is not successfully completed.

This report is requesting City Council extend the authority granted to Administration to allow for the negotiation of additional time to achieve the Test and Final Completion. The contemplated recommendations in this report augment the authority granted in CR13-26 and CM13-12.

DISCUSSION

The Project Agreement specifies that EPCOR has until December 31, 2017 to successfully complete the Test. To date, EPCOR has not met the Test, although it is possible that it may be successfully completed prior to the end of this year. Since Substantial Completion in December 2016, EPCOR has continued to improve the operation of the WWTP by carrying out additional refinement to the infrastructure and processes. These refinements have been fully at EPCOR's cost and the City has not paid any additional money. EPCOR and its team are committed to

providing the City with the WWTP that fully meets the Project Agreement requirements.

Since the Project Agreement does not have a provision to extend the performance testing beyond December 31, 2017, both the City and EPCOR would need to agree to an extension. This extension is beyond the authority granted in CR13-26 and CM13-12. The Administration requires approval from City Council granting additional authority to extend the test beyond December 31, 2017.

Any negotiation of an extension of time for EPCOR to complete the Test and achieve Final Completion must involve EPCOR covering all the City's financial costs related to the extension and protect the City from any additional risk because of the extension. It is in the City's best interest to receive a WWTP that meets the contractual required capacity through the protective risk transfer structure within the Project Agreement.

It is possible that a one-time extension of up to 24-months would be required for additional design, construction and testing. Since the determination of how to meet the Test capacity is at EPCOR's risk, it is up to EPCOR to determine solutions and EPCOR's priority for this work. The City will not be providing EPCOR any direction on these items other than comments around contractual compliance.

The P3 has provided an extremely robust process and contract that has protected the City's interests. The City continues to hold \$25,000,000 to ensure that EPCOR meets their contractual obligations. In traditional projects, this financial security is not available. If EPCOR fails to meet the Test, now or after an extension, the City would be entitled to redeem the Letter of Credit, which would relieve EPCOR from completing the Test.

The City and EPCOR have had preliminary discussions and are confident that an agreement can be reached that delivers an extension within the recommendations contemplated within this report.

RECOMMENDATION IMPLICATIONS

Financial Implications

There are no additional costs to the City as EPCOR is responsible for all costs related to the extension.

Environmental Implications

The upgraded WWTP has improved treatment and the effluent has met all environmental permit standards. Successfully completing the 30-Day Performance Test is about demonstrating long-term treatment capacity. The environment will not be impacted by providing additional time to complete the testing.

Policy and/or Strategic Implications

The City continues to be protected by the strength of the Project Agreement and has received the risk transfer that was contemplated within the P3 process.

Other Implications

None associated with this report.

COMMUNICATIONS

The City and EPCOR will continue ongoing communications activities to keep the public and stakeholders informed on WWTP activities.

DELEGATED AUTHORITY

The recommendations in this report require the approval of City Council.

Respectfully submitted,



Rob Court
Manager, WWTP Upgrade Project

Respectfully submitted,



Kim Onrait
Executive Director, City Services

Report prepared by:
Rob Court, Director, Land & Real Estate Management