



Hamilton

INFORMATION REPORT

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| TO: | Chair and Members Audit, Finance and Administration Committee |
| COMMITTEE DATE: | March 26, 2020 |
| SUBJECT/REPORT NO: | Agreement for Continued Supply of Raw Water to 690 Strathearne Avenue North (FCS18049(e)) (Ward 4) (Outstanding Business List Item) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | John Savoia (905) 546-2424 Ext. 7298 |
| SUBMITTED BY: | Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department |
| SIGNATURE: | |

COUNCIL DIRECTION

At the February 13, 2019 meeting of Council (Council Minutes 19-003, Item 10.1), Council directed staff to report back on an agreement for the continued supply of raw water to 690 Strathearne Avenue North.

INFORMATION

Report FCS18049(e) provides an update to Council regarding a new Raw Water Supply Agreement (Agreement) that recently has been fully executed between the City and ArcelorMittal Long Products Canada (AMLPC) for the continued supply of raw water to AMLPC's manufacturing facility located at 690 Strathearne Avenue North.

In April 2018, Council authorized and directed staff to negotiate and enter into, on behalf of the City, a raw water supply agreement with the owner of 690 Strathearne Avenue North, currently AMLPC, for the continued supply of raw water by the City. The Agreement must incorporate the following terms and conditions:

- That AMLPC remains fully responsible for the repair and maintenance costs associated with the raw water pump station (located at the City's Woodward Avenue Water Treatment Plant site) supplying raw water to 690 Strathearne Avenue North;

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- That AMLPC remains fully responsible for the repair and maintenance of the water meter chamber, pipeline and all works and / or infrastructure required in connection to the raw water supply;
- That the variable raw water rates charged to AMLPC ensure, at a minimum, full cost recovery;
- That the fixed daily water charges, based on the size of the water meter, be billed to AMLPC at the same rates that the City charges to its water consumers within the City of Hamilton; and
- That an easement be granted to AMLPC associated with the AMLPC-owned pipeline that conveys the raw water supplied to 690 Strathearne Avenue North with related annual charges for easement rights be commensurate with the current market value of those rights.

An ongoing consideration regarding the supply of raw water from the City to a single industrial customer is with respect to the bonusing provisions within the *Municipal Act* (Section 106). The new agreement must fundamentally mirror the original 1965 agreement to ensure the City is not responsible for ongoing operating and capital costs associated with this unique supply, nor can the City have liability exposure, if and when, the raw water supply is interrupted.

After nearly two years of negotiations, a new Agreement, attached as Appendix “A” to Report FCS18049(e), has been executed.

The terms of the Agreement include:

- Term of 20 years from the date of execution of the Agreement;
- Charges for raw water are as follows:
 - (i) Fixed Charges – are based on the size of the water meter and will be charged at the same rates that City charges to its consumers within the City;
 - (ii) Variable (Consumption) Charges – raw water consumption will be charged on a per cubic metre basis at 7.5% of the rate Hamilton charges for the supply of potable water;
- In lieu of an easement agreement, AMLPC has been granted a licence under which AMLPC shall have the right to have their pipeline that conveys the raw water supplied to 690 Strathearne Avenue North occupy City property;
- AMLPC shall pay an annual Licence Fee, plus applicable sales taxes, during each year of the Term in accordance with the following chart:

| Timeframe | Amount of Annual Licence Fee |
|--------------------------------------|------------------------------|
| January 15, 2020 to January 14, 2025 | \$18,500.00 |
| January 15, 2025 to January 14, 2030 | \$19,425.00 |
| January 15, 2030 to January 14, 2035 | \$20,400.00 |
| January 15, 2035 to January 14, 2040 | \$20,420.00 |

- By August 31, 2020, AMLPC has agreed to the installation of a backflow prevention device satisfactory to the City;
- AMLPC to pay \$443 K towards the costs of electrical upgrades required for the Raw Water Pumping Station;
- AMLPC to pay for the actual costs needed to bring the Raw Water Pumping Station to a reasonable level of repair;
- AMLPC continues to be fully responsible for all operating, repair and maintenance costs associated with the Raw Water Pumping Station; and
- There continues to be no liability obligation to the City in connection with interruption / disruption of raw water supply or the provision of notice.

In September 2019, a legal proceeding was commenced by AMLPC seeking injunctions against the City that would have the effect of requiring the City to continue the supply of raw water to AMLPC despite the absence of a contract. The execution of the Agreement was contingent on the termination of the existing litigation through the issuance of a consent order.

The 2020 Rate Supported Budget includes \$125 K in revenues related to the supply of raw water to AMLPC.

Historical Background

In 1965, the City had entered into an agreement with the former Steel Company of Canada (Stelco) to supply chlorinated raw water from a raw water pumping station (historically known as the Stelco Pumping Station) (Raw Water Pumping Station), located at the City's Woodward Avenue Water Treatment Plant (WTP). In addition, in 1966, the same two parties entered into an easement agreement which allowed Stelco to construct, maintain and operate a watermain for the conveyance of the chlorinated raw water from the Raw Water Pumping Station to Stelco's property located at 690 Strathearne Avenue North ("Easement") to two Stelco facilities, #2 Rod Mill and Stelwire over City lands.

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Both the Raw Water Agreement and the Easement expired on April 26, 1985. However, the original two parties and their successors, namely the City and AMLPC, have to date continued to act in accordance with the same terms and conditions as are contained in the original Raw Water Agreement and Easement.

In 2004, Stelco closed the #2 Rod Mill and the mill was dismantled. Subsequently, the property was sold to the Hamilton Port Authority and the property's connection to the raw water pipeline was severed. AMLPC's 2005 purchase of Stelco's former Stelwire operation located at 690 Strathearne Avenue North resulted in AMLPC's wire plant being the sole customer of this chlorinated raw water supply from the City. This acquisition also led to AMLPC becoming the owner of the watermain connecting the Stelco Pumping Station to AMLPC's operations. AMLPC has indicated to staff that the raw water supply is an essential requirement to the viability of their wire plant in Hamilton (for further details refer to Report FCS18049(a)).

Over the past decade, the City had raised significant concerns regarding the Raw Water Pumping Station's reliability and repair and the associated capital maintenance requirements that this facility would require to maintain its operation.

Report FCS18049(e) addresses Outstanding Business List Item No. 19-B (Agreement for the Supply of Raw Water to 690 Strathearne Avenue North). This item can be removed from the Audit, Finance and Administration Committee Outstanding Business List.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report FCS18049(e) – City of Hamilton / ArcelorMittal Long Products Canada GP Raw Water Supply Agreement

JS/dt