



CITY COUNCIL
Scoop Lewry Room, 2nd Floor, City Hall

AGENDA

SPECIAL CITY COUNCIL MEETING

Tuesday, October 3, 2017 – 12:30 p.m.

1. **CALL TO ORDER**
2. **MOTION TO GO INTO THE COMMITTEE OF THE WHOLE**
 - a) Possible Extension of CPI Offer to Purchase Agreement
3. **ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE**
4. **ADJOURNMENT**

***The Next Regular Meeting of City Council is
Scheduled for TUESDAY, OCTOBER 10, 2017***

CITY OF MOOSE JAW

DATE: October 3, 2017
TO: City Council
FROM: Economic Development Services
SUBJECT: CPI Canadian Protein Innovation Ltd.
Third Amending Agreement

PURPOSE:

The purpose of this report is to consider a Third Amending Agreement from CPI Canadian Protein Innovations Ltd. (“CPI”) dated October 2, 2017 (Schedule “A”). CPI wishes to request an extension for the Closing Date from October 3, 2017 to November 30, 2017. In addition, CPI has included in the Agreement the request to operate outside of the City of Moose Jaw’s Utility Bylaw, No. 5152 (the “**Bylaw**”) until July 31, 2022, rather than the two (2) years from the commencement of operation as was previously permitted by Council.

BACKGROUND:

An Offer to Purchase (the “**Offer**”) dated September 14, 2016 was received from CPI by the City. That original Offer was presented to Council and on October 3, 2016 at a regular meeting of Council resolution #646 was passed stating:

“THAT City Council approve Canadian Protein Innovations Offer to Purchase substantially in the form attached to report dated September 17, 2016 from Economic Development Services as Attachment “A” and also attached to the September 26, 2016 Executive Committee minutes as Appendix “B”, subject to receiving the ten percent (10%) deposit.”

The Offer contemplated a June 30, 2017 Closing Date. Upon the arrival of June 30, 2017, CPI did not have the financing in place to close, as such, an Amending Agreement dated June 27, 2016 was received by CPI requesting an extension of the Closing Date to August 31, 2017 and requiring that a definitive servicing agreement be reached prior to closing and the City was to represent that the land was not contaminated. This was approved by Council on June 26, 2017.

A draft servicing agreement was prepared by the City and provided to CPI on July 28, 2017. As August 31, 2017 approached, CPI indicated they had substantial changes to the draft servicing agreement and requested a second extension to October 3, 2017 through a Second Amending Agreement dated August 31, 2017. The Second Amending Agreement was approved by Council on August 31, 2017.

On September 28, 2017, CPI representatives attended the City of Moose Jaw and provided City Administration with substantial changes to the draft servicing agreement provided to them on July 28, 2017. During that meeting, it was also indicated that financial constraints would not permit CPI to close on October 3, 2017 as agreed in the Second Amending Agreement. As such, City Administration received a Third Amending Agreement on October 2, 2017 requesting an extension of the Closing Date to November 30, 2017 and requesting permission not to comply with the City's Bylaw, until July 31, 2022.

DISCUSSION:

At the meeting of September 28, 2017 meeting between City Administration and CPI, CPI indicated that they had substantial changes to the draft servicing agreement. These substantial changes also deviated from their original Offer. Those substantial changes included:

1. Closing Date;
2. Fixed sewer and water rates;
3. Non-compliance with the Bylaw until July 31, 2022; and
4. Irrigation of CPI Waste Water.

Closing Date

The extension requested regarding the Closing Date is due to financial constraints, as well as, reaching an agreement on the draft servicing agreement. Currently, the Closing Date is today, October 3, 2017, to deny this extension would result in the original Offer lapsing and CPI would need to present Council with a new offer to purchase.

Fixed Sewer and Water Rates

CPI has disputed the original sewer and water rates that was requested in their Offer. The original Offer indicated the sewer and water rates would be set at the 2015 rates. Those rates were presented to Council on October 3, 2016 as follows:

Water: \$0.90/m³ of Fresh Water consumed + \$2,832.53/month

Sewer: \$0.93/m³ of Waste Water + \$1,468.91/month

CPI disputes the sewer fixed rate of \$1,468.91/month in particular as it was agreed between the parties that CPI would install their own waste water line to transfer waste water that does not meet the Bylaw requirements from their operation to the City lagoons. As such, CPI is of the belief they would be paying double the amount that would otherwise be charged by the City for waste water infrastructure.

Non-compliance with Bylaw until July 31, 2022

A large part of the discussion at the September 28, 2017 meeting revolved around the inability of CPI to comply with the Bylaw any earlier than July 31, 2022. CPI was originally granted authority from Council to operate outside of the Bylaw for two (2) years following the commencement of

production. The City lagoons have capacity to store CPI's waste water for two (2) years. In the original agreement between the parties, following that two (2) year period CPI was to pre-treat their waste water to ensure it complied with the Bylaw and could be discharged into the City's waste water treatment system. Upon further review of their business plan, CPI has indicated that they will not be in full operation until December 31, 2020, meaning they will not be at 100% production until that date. CPI requires to be at full production to determine whether evaporators are necessary to eliminate any odour issues their operation may cause. As it takes eighteen (18) months to order, manufacture and install the evaporators, CPI has therefore asked until July 31, 2022 to deviate from the Bylaw.

Irrigation of CPI Waste Water

As the concentrates of the waste water that would be produced by CPI are not at permitted levels to discharge into natural river streams, CPI has requested that the City explore irrigation options. The irrigation option would be subject to the City receiving the required permits from the Ministry of Environment and that the current purchasers of City irrigation products agree to receive the waste water produced by CPI since CPI waste water will have different concentration levels than that currently supplied.

In regards to the Third Amending Agreement, Council has three options:

1. Approve the Third Amending Agreement;
2. Deny the Third Amending Agreement; or
3. Counter the Third Amending Agreement.

Approving the Third Amending Agreement would permit the Offer to extend until November 30, 2017, with the revisions that were approved in the first Amending Agreement (i.e. reaching a definitive servicing agreement and the City represent the land is not contaminated) and the current request in the Third Amending Agreement to deviate from the Bylaw until July 31, 2022.

Denying the Third Amending Agreement would result in the Offer lapsing and CPI, if they wish to proceed with the project, would need to present Council with a new offer to purchase.

Council may also wish to counter the Third Amending Agreement with a closing date they see fit for the project or a preferred limitation date for CPI to operate outside of the Bylaw. However, as this would take negotiation with CPI and with the time difference in Germany where the CEO of CPI resides, this may not be possible to be concluded prior to the end of business day today. If an agreement is not reached prior to end of closing day today, the Offer will lapse and a new offer would be necessary to proceed.

ALTERNATIVES:

1. Approve the Third Amending Agreement;
2. Deny the Third Amending Agreement; or

3. Counter the Third Amending Agreement.

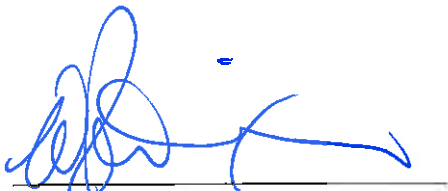
ATTACHMENTS:

1. Schedule "A": Third Amending Agreement.

RECOMMENDATION:

THAT City Administration be granted authority to execute the Third Amending Agreement substantially in the form as attached, which will result in an extension of the Closing Date from October 3, 2017 to November 30, 2017 and will permit CPI to operate outside of the Utility Bylaw, No. 5152 until July 31, 2022.

Respectfully submitted,

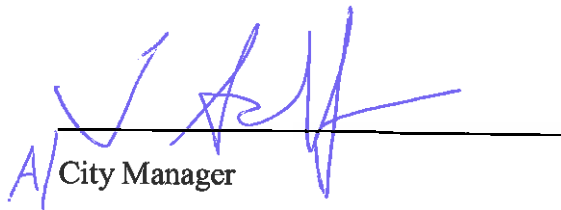


Jim Dixon
Economic Development Officer

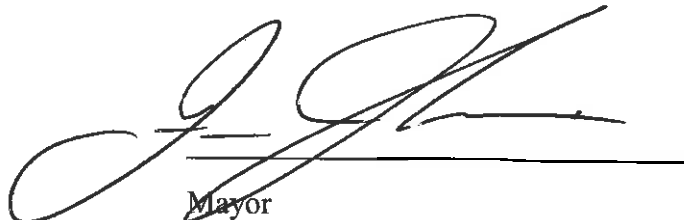


Michelle Sanson
Director, Planning and Development Services

CITY MANAGER'S COMMENTS:


City Manager

MAYOR'S COMMENTS:


Mayor

Schedule "A"

THIRD AMENDING AGREEMENT

THIS THIRD AMENDING AGREEMENT made effective October 2, 2017.

BETWEEN:

CPI CANADIAN PROTEIN INNOVATION LTD.

AND:

(the "Purchaser")

CITY OF MOOSE JAW

(the "Vendor")

WHEREAS:

1. By Offer to Purchase (Land for Industrial Development) dated the 14th day of September, 2016 (the "Offer") the Vendor agreed to sell and by Resolution #646 of the October 3, 2016 Regular Council meeting the Purchaser agreed to purchase a portion of the lands legally described as NE ¼ 27-16-26 W2M (the "Property") on the terms and conditions more particularly described in the Agreement;
2. The Purchaser and the Vendor agreed to amend the terms of the Offer pursuant to an Amending Agreement made effective the 27th day of June, 2017 (the "First Amending Agreement") and an Amending Agreement made effective August 31, 2017 (the "Second Amending Agreement") (the Offer, First Amending Agreement, and Second Amending Agreement together called the "Agreement"); and
3. The Purchaser and the Vendor mutually agree to modify the terms of the Agreement on the terms and conditions as set out in this third amending agreement (the "Third Amending Agreement").

NOW THEREFORE, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

1.00 INTERPRETATION

- 1.01 Any capitalized terms in this Third Amending Agreement not defined herein shall have the meaning set out in the Agreement, as applicable.

2.00 CLOSING DATE

- 2.01 The Purchaser and the Vendor agree to amend the Closing Date of the purchase and sale transaction from October 3rd, 2017 to November 30th, 2017. The Purchaser and the Vendor agree that "Closing Date" shall mean November 30th, 2017, unless such earlier date is mutually agreed to in writing by the Purchaser and the Vendor.

3.00 UTILITY BYLAW NO. 5152

- 3.01 The Purchaser and the Vendor acknowledge and agree that the Purchaser intends to construct a pea processing plant on the Property (the "**Proposed Development**") and that the Proposed Development will not be compliant with the City of Moose Jaw's Utility Bylaw No. 5152 (the "**Utility Bylaw**") until such time that the Purchaser has developed an adequate waste water management system to process waste water from the Proposed Development. The Vendor acknowledges and agrees that the Purchaser is permitted to not be in compliance with the Utility Bylaw until July 31, 2022. Commencing August 1, 2022, the Purchaser shall be required to be in compliance with the Utility Bylaw.

4.00 MISCELLANEOUS

- 4.01 Time of the Essence Time is of the essence of this Third Amending Agreement.
- 4.02 Notices All notices which may be given under the provisions of this Third Amending Agreement shall be in writing, and shall be sufficiently given if delivered personally or by courier or sent by fax delivered to the appropriate party to such address or facsimile number as the parties may from time to time direct in writing. Any such notice shall if, delivered by hand, be deemed to have been given when delivered, or if transmitted by facsimile, be deemed to have been given immediately upon receipt thereof if received on a business day or, if received on a day which is not a business day, on the first business day after actual receipt.
- 4.03 Law The laws of the Province of Saskatchewan shall govern the interpretation and enforcement of this Third Amending Agreement.
- 4.04 Enurement This Third Amending Agreement shall enure to the benefit of the parties hereto, their respective heirs, executors, successors, and assigns, as the case may be.
- 4.05 Counterpart This Third Amending Agreement may be signed in any number of counterparts and such counterparts together shall constitute a single instrument. Delivery of this Third Amending Agreement by electronic means, including, without limitation, by facsimile transmission or by electronic delivery in portable

document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart hereof. The parties hereto acknowledge and agree that in any legal proceedings between them respecting or in any way relating to this Third Amending Agreement, each waives the right to raise any defence based on the execution hereof in counterparts or the delivery of such executed counterparts by electronic means.

[Intentionally left blank. Signature page to follow]

IN WITNESS WHEREOF the Purchaser has executed this Third Amending Agreement.

CPI CANADIAN PROTEIN
INNOVATION LTD.

PER: _____



Michael Schonert

IN WITNESS WHEREOF the Vendor has executed this Third Amending Agreement.

CITY OF MOOSE JAW

(seal)

CITY CLERK

MAYOR