Minute No. 257
Report - Standing Policy Committee on Property and Development – March 10, 2011

Item No. 3 **Development Agreement Amendment – Waverley West Arterial Roads Project – Waverley West**
(St. Norbert Ward)
File DASZ 22/2007

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That Clause 7, a) in Section I of Schedule "C" of Development Agreement AG 22/07 be amended by deleting the words "the addendum to this Agreement to be prepared pursuant to".

2. That subject to finalizing the joint Federal-Provincial-City tripartite funding agreement for the Waverley West Arterial Roads Project , Clause 7, b) in Section I of Schedule "C" of Development Agreement AG 22/07 be deleted in its entirety and replaced with a new Clause 7, b), as follows;

   "7. b) The Developer shall, finance and construct the twinning of Waverley Street, in the southbound (west) lanes of Waverley Street, from the north limit of the South Pointe Subdivision to Tim Sale Drive/Pine Hills Road, and all related works, including, but not necessarily limited to, pavement transitions, ornamental street lighting, boulevard landscaping, and land drainage facilities, all as determined by, and to the satisfaction of, the Director of Public Works.

   The City shall reimburse the Developer for the full cost of construction, as determined by the Director of Public Works, within 10 years of substantial completion of the construction, in accordance with the terms and conditions contained pursuant to sub-clause "c)", below."

3. That Clause 7, c) in Section I of Schedule "C" of Development Agreement AG 22/07 be deleted in its entirety and replaced with a new Clause 7, c) as follows:

   "7.c) i) The City shall reimburse the Developer for the City's share of costs of construction, including engineering fees for works in Waverley Street as specified in Clause 7. a) and 7. b), as amended above, by November 26, 2018. It is understood and agreed that the City may make payments prior to November 26, 2018, without penalty, upon providing the Developer at least forty-eight (48) hours notice, which payments shall firstly be applied to accrued interest and then to the principal as applicable.

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COUNCIL DECISION (continued):

ii) It is further understood and agreed that any unpaid balance of the City's share of the costs of construction starting from the date of substantial completion of the works, as specified in Clause 7. a) and 7. b), as amended above, shall be subject to interest calculated daily (compounded annually) at a rate equal to the City's capital borrowing rate, being the effective rate payable by the City on its debenture issue immediately preceding the date of substantial completion. (Rate = 5.9 %)

iii) It is further understood that any unpaid balance of the City's share of the construction costs after November 26, 2018 shall in addition be subject to a penalty payment by the City of five percent (5%) per annum, computed daily (compounded annually) on such unpaid balance."

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by Councillor Browaty,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 16, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Riel Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 10, 2011, the Standing Policy Committee on Property and Development concurred in the recommendation of the Riel Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On February 14, 2011, the Riel Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the matter to the Standing Policy Committee on Property and Development.

ADMINISTRATIVE REPORT

Title: **REQUEST TO AMEND DEVELOPMENT AGREEMENT AG 22/07**

Issue: **Waverley West Arterial Roads Project, Joint Federal-Provincial-City Tripartite Funding Agreement**

Critical Path: **Riel Community Committee → Standing Policy Committee on Property and Development → Executive Policy Committee → Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
Kim Raban Land Development Administrator	Deepak Joshi, Director	N/A	N/A

RECOMMENDATIONS

It is recommended that Development Agreement AG 22/07 be amended as follows;

1. Amend Clause 7, a) in Section I of Schedule "C" of Development Agreement AG 22/07, by deleting the words "the addendum to this Agreement to be prepared pursuant to".

2. Subject to finalizing the joint Federal-Provincial-City tripartite funding agreement for the Waverley West Arterial Roads Project , delete Clause 7, b) in Section I of Schedule "C" of Development Agreement AG 22/07, in its entirety and replace with a new Clause 7, b), as follows;

   "7. b) The Developer shall, finance and construct the twinning of Waverley Street, in the southbound (west) lanes of Waverley Street, from the north limit of the South Pointe Subdivision to Tim Sale Drive/Pine Hills Road, and all related works, including, but not necessarily limited to, pavement transitions, ornamental street lighting, boulevard landscaping, and land drainage facilities, all as determined by, and to the satisfaction of, the Director of Public Works.

The City shall reimburse the Developer for the full cost of construction, as determined by the Director of Public Works, within 10 years of substantial completion of the construction, in accordance with the terms and conditions contained pursuant to sub-clause "c)", below."

3. Delete Clause 7, c) in its entirety and insert a new Clause 7, c) as follows:

   "7.c) i) The City shall reimburse the Developer for the City's share of costs of construction, including engineering fees for works in Waverley Street as specified in Clause 7. a) and 7. b), as amended above, by November 26, 2018. It is understood and agreed that the City may make payments prior to November 26, 2018, without penalty, upon providing the Developer at least forty-eight (48) hours notice, which payments shall firstly be applied to accrued interest and then to the principal as applicable.

   ii) It is further understood and agreed that any unpaid balance of the City's share of the costs of construction starting from the date of substantial completion of the works, as specified in Clause 7. a) and 7. b), as amended above, shall be subject to interest calculated daily (compounded annually) at a rate equal to the City's capital borrowing rate, being the effective rate payable by the City on its debenture issue immediately preceding the date of substantial completion. (Rate = 5.9 %)

   iii) It is further understood that any unpaid balance of the City's share of the construction costs after November 26, 2018 shall in addition be subject to a penalty payment by the City of five percent (5%) per annum, computed daily (compounded annually) on such unpaid balance."

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required to amend Development Agreement terms and conditions.

IMPLICATIONS OF THE RECOMMENDATIONS

Construction of Kenaston Boulevard between Bishop Grandin Boulevard and PTH 100 is anticipated to be undertaken by the City and funded by the three levels of government as part of the Waverley West Arterial Roads Project. The Funding Agreement is expected to be finalized shortly. Funding for this project is contained within the 2010 Capital Budget ($51.3 million) and the preliminary 2011 Capital Budget ($3.4 million). If the recommendations of the Winnipeg Public Service are concurred in, an amendment to Development Agreement AG 22/07 may be undertaken as necessary.

HISTORY

See Appendix "A", report to the Riel Community Committee, attached for additional information and background.

FINANCIAL IMPACT

There is no financial impact associated with this recommendation.

CONSULTATION

In preparing this Report there was consultation with:

Public Works Department

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Development and Inspections
Prepared by:	Rob Deighton, Land Development Branch
Date:	February 5, 2011
File No.	AG 22/07 (DASZ 22/07)

Appendix "A" – Administrative report to the Riel Community Committee

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APPENDIX "A" – Administrative Report to the Riel Community Committee

RE: REQUEST TO AMEND DEVELOPMENT AGREEMENT AG 22/07 –
LADCO COMPANY LIMITED

FOR SUBMISSION TO THE RIEL COMMUNITY COMMITTEE

"original signed by R.Deighton"

R.R. Deighton, P. Eng.
Land Development Coordinator

February 4, 2011

Riel Community Committee
February 4, 2011
Request to amend AG 22/07
Clause 7a), b) and c)

RE: REQUEST TO AMEND DEVELOPMENT AGREEMENT AG 22/07 – LADCO COMPANY LIMITED

On November 21, 2007 the Developer, Ladco Company Limited entered into Development Agreement AG 22/07 with the City establishing development conditions to serve the planned area for their South Pointe subdivision.

On September 30, 2009, $54.7 million was announced in joint Federal-Provincial-City funding for the Waverley West Arterial Roads Project. The project includes the twinning and rehabilitation of Waverley Street from the north limit of the South Pointe subdivision to its intersection with Bison Drive. Funding in the amount of $51.3 million was approved as part of the 2010 Capital Budget and additional funds in the amount of $3.4 million are included in the preliminary 2011 Capital Budget. An Agreement for the Waverley West Arterial Roads Project between the three levels of government is expected to be finalized shortly.

On September 22, 2010, Council approved the Developer's request to amend Development Agreement AG 22/07 to allow the continued development, until the end of the 2012 construction season, into the Phase II area of the South Pointe subdivision prior to construction of required twinning of Waverley Street as set out under terms and conditions of the agreement.

Clause 7. a) in Section 1 of Schedule "C" of Development Agreement AG 22/07 obligated the Developer (Ladco) to finance and construct a two lane, 8.0m concrete pavement in Waverley Street within the Planned Area, and the City to reimburse the Developer for one-half the cost in the most northerly approximately 500m of Waverley Street. Clause 7. b) in Section 1 of Schedule "C" obligated the Developer to finance and construct the twinning of Waverley Street from Bison Drive to Tim Sale Drive/Pine Hills Road by the end of the 2012 construction season, and the City to reimburse the Developer the full cost. Clause 7, c) in Section 1 of Schedule "C" specified that the terms and conditions of the cost sharing and front-ending were to be addressed in an addendum to the Agreement.

As the twinning of Waverley Street from the north limit of the South Pointe subdivision to its intersection with Bison Drive is included in the Waverley West Arterial Roads Project to be funded by the three levels of Government and undertaken by the City it is no longer necessary to obligate the Developer for these works. The Developer has previously completed the Waverley Street twinning from Tim Sale Drive/Pine Hills Road to the north limit of the South Pointe subdivision. The Developer would continue to be obligated for specific works at intersections on Waverley Street serving the development as specified in Clause 7. d), e), f) and g) of Section 1 of Schedule "C" of the Agreement.

The Public Works Department and Developer have been working cooperatively

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regarding the pending resolution of construction and scheduling details following terms of the pending governmental tripartite agreement and wish at this time to undertake to formalize further amendments to affected clauses under Development Agreement AG 22/07.

It is therefore recommended that Development Agreement AG 22/07 be further amended as follows;

1. That Clause 7, a) in Section I of Schedule "C" of Development Agreement AG 22/07, be amended by deleting the words "the addendum to this Agreement to be prepared pursuant to".

2. That Clause 7, b) in Section I of Schedule "C" of Development Agreement AG 22/07, be deleted in its entirety and replaced with new Clause 7, b), subject to the finalization of the Funding Agreement between the three levels of government for the Waverley West Arterial Roads Project, being inserted as follows;

   "7. b) The Developer shall, finance and construct the twinning of Waverley Street, in the southbound (west) lanes of Waverley Street, from the north limit of the South Pointe Subdivision to Tim Sale Drive/Pine Hills Road, and all related works, including, but not necessarily limited to, pavement transitions, ornamental street lighting, boulevard landscaping, and land drainage facilities, all as determined by, and to the satisfaction of, the Director of Public Works.

   The City shall reimburse the Developer for the full cost of construction, as determined by the Director of Public Works, within 10 years of substantial completion of the construction, in accordance with the terms and conditions contained pursuant to sub-clause "c)", below."

3. That Clause 7, c) be deleted in its entirety and a new Clause 7, c) being inserted as follows:

   "7.c) i) The City shall reimburse the Developer for the City's share of costs of construction, including engineering fees for works in Waverley Street as specified in Clause 7. a) and 7. b), as amended above, by November 26, 2018. It is understood and agreed that the City may make payments prior to November 26, 2018, without penalty, upon providing the Developer at least forty-eight (48) hours notice, which payments shall firstly be applied to accrued interest and then to the principal as applicable.

   ii) It is further understood and agreed that any unpaid balance of the City's share of the costs of construction starting from the date of substantial completion of the works, as specified in Clause 7. a) and 7. b), as amended above, shall be subject to interest calculated daily (compounded annually) at a rate equal to the City's

capital borrowing rate, being the effective rate payable by the City on its debenture issue immediately preceding the date of substantial completion. (Rate = 5.9 %)

iii) It is further understood that any unpaid balance of the City's share of the construction costs after November 26, 2018 shall in addition be subject to a penalty payment by the City of five percent (5%) per annum, computed daily (compounded annually) on such unpaid balance."

THIS REPORT SUBMITTED BY:

Land Development Branch
File No. AG 22/07
February 4, 2011

"original signed by R.Deighton"

R.R. Deighton, P. Eng.,
Land Development Branch

"original signed by R.Hartmann"

R. J. Hartmann, P. Eng.
Public Works Department, Transportation Division

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