Agenda – Council – July 19, 2017

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 4, 2017

Item No. 7 Amendment to Lease Agreement that Allows the Use of City-Owned Lands at 1360 Taylor Avenue (River Heights-Fort Garry Ward)

STANDING COMMITTEE RECOMMENDATION:

On July 12, 2017, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That the proposed terms and conditions attached as Schedule "A" to amend the Lease Agreement between Mondo Foods Co. Ltd. (hereinafter referred to as the 'Tenant') and the City of Winnipeg dated September 4, 1998 in favour of Mondo Foods Co. Inc. for the purpose of a reducing the leased area used for parking, and identified as "Proposed Lease Area During Construction" on Misc. Plan 13128/6, be approved.

2. That the City enter into, execute and deliver a Lease Amendment Agreement with Mondo Foods Co. Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement Recommendation 1.

3. That the Chief Administrative Officer ("CAO") be delegated the authority to negotiate and approve the terms and conditions of the Lease Amendment Agreement and any ancillary agreements in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

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

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 4, 2017

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 12, 2017, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 4, 2017, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Amendment to Lease Agreement that Allows the Use of City-Owned Lands at 1360 Taylor Avenue

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	J. Kiernan	N/A	D. McNeil

EXECUTIVE SUMMARY

This report requests approval to amend an existing lease agreement between Mondo Foods Co. Inc. (the Tenant) and the City of Winnipeg for the purpose of reducing the Tenant's leased area during construction of the Waverley Underpass. The Public Works Department requires a portion of the leased area for the Waverley Underpass Project. The Tenant will continue to use the remainder of the leased land for parking and signage.

RECOMMENDATIONS

1. That Council approve the proposed terms and conditions attached as Schedule "A" to amend the Lease Agreement between Mondo Foods Co. Ltd. (hereinafter referred to as the 'Tenant') and the City of Winnipeg dated September 4, 1998 in favour of Mondo Foods Co. Inc. for the purpose of a reducing the leased area used for parking, and identified as "Proposed Lease Area During Construction" on Misc. Plan 13128/6.

2. That the City enter into, execute and deliver a Lease Amendment Agreement with Mondo Foods Co. Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement Recommendation 1.

3. That the Chief Administrative Officer ("CAO") be delegated the authority to negotiate and approve the terms and conditions of the Lease Amendment Agreement and any ancillary agreements in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

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

In accordance with the Council order of July 18, 1979, the Standing Policy Committee on Property and Development, Heritage and Downtown Development shall authorize the leasing or rental of City properties for which the Director of the Planning, Property and Development Department has no authority.

Council approval is required for this lease amendment because Mondo Foods Co Inc. will continue to lease the property for $1.00 and Council approval is required for an amendment to a lease that will continue at a rental rate of $1.00 when the lessee is not in compliance with the City's non-monetary grant criteria.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general policy, regulatory, environmental or human resource implications to amending the lease agreement.

HISTORY/DISCUSSION

On February 25, 1998, Council adopted the following recommendation of Standing Policy Committee on Property and Development:

i.

II, That the sale of the subject City-owned property, as outlined on Misc. Plan No. CC 8123/4, be approved to Mondo Foods Company Ltd. for the price of $250,000.00 with the terms and conditions of the sale to be as outlined, subject to the purchaser entering into a lease agreement with the City on the lands outlined as "lands required for street purposes" on Misc. Plan No. CC 8123/4.

In 2015, plans were announced for the Waverley Underpass Project. Construction was scheduled to begin in early to mid-2017, and a portion of the Leased Area that comprised the Original Lease Agreement is required by the Public Works Department for the construction.

The Tenant was notified on July 20th, 2016, of the City's intention to amend the Agreement that would decrease the Tenant's area under lease, which is utilized for parking, to the area identified as 'Proposed Lease Area During Construction' on misc. plan 13128/6.

On December 20th, 2016, the Tenant was informed that the City was invoking the 90-day cancellation provision of the Agreement and that as of April 1st, 2017, the Agreement would be terminated. An amendment term sheet was also provided as a means of avoiding an outright termination of the lease, and would see the Tenant's leased area decrease (the Amendment). This option was seen as most optimal for the City as termination could potentially leave the City liable should some deleterious event take place in the former leased area as Mondo Foods Co. Ltd. would no longer be required to insure the leased area despite the likelihood that they would still be utilizing parts of it, most assuredly for signage.

At this time, Planning, Property and Development are recommending that the $1.00 rent be kept intact so as to move along the amendment more quickly. Without the amendment in place, the original agreement would have to be terminated as the Tenant is no longer able to use much of the lands that comprised the original agreement. If this were to happen, the City would thus be liable for the previously leased lands. The Property Management Branch has been directed to begin negotiations immediately with the Tenant for an agreement that will charge market rent after construction of the Waverley Underpass is complete.

The Planning, Property and Development Department have negotiated proposed Terms and Conditions of an amendment agreement in favour of Mondo Foods Co. Inc.

This report seeks approval of the Lease Amending Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement Date: May 2, 2017

Project Name:

Proposed Amendment to Lease Agreement that Allows the Use of City-Owned Lands at 1360 Taylor Avenue for the Purpose of Parking

COMMENTS:

The proposed amendments to the lease agreement are non-financial in nature. As such, there are no financial implications associated with the recommendations in this report.

"Original Signed By"
Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Legal Services Department (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg Reference:

- **Section 01-01- Connect and Expand our Transportation and Infrastructure Networks**
- **Section 1-3- Direction 5: Demonstrate Visionary Civic Leadership and Commitment to Sustainable Long-Term Planning**
- **Section 01-02a- Direction 4: Promote Safety on Streets and Sidewalks**

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Property Administrator
Date:	May 10, 2017
File No.:	2598-D-2

Attachments: Schedule A (with Misc. Plan No. 13128/6)

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SCHEDULE A

PROPOSED TERMS AND CONDITIONS TO AMEND THE LEASE AGREEMENT BETWEEN THE CITY AND MONDO FOODS CO. LTD. FOR LANDS AT 1360 TAYLOR AVENUE

Shown outlined on attached Misc. Plan No. 13128/6

Landlord: The City of Winnipeg

Tenant: Mondo Foods Co. Ltd. (hereinafter identified at the "Tenant")

Purpose: To amend the original Lease Agreement between the City of Winnipeg and the Tenant dated September 4, 1998 (hereinafter identified as the "Agreement");

Special Conditions: To amend the Agreement to include the following:

1. To amend the "Leased Land" as defined in the Agreement and replace Misc. Plan No. CC8123/8 attached to the Agreement with Misc. Plan No. 13128/6.

2. To strike out the following words, add the underlined words and amend the 3rd paragraph of the preamble as follows:

   AND WHEREAS the Lessee has applied to the City to lease that portion of the City's said land shown shaded and identified as ~~"LAND REQUIRED FOR STREET PURPOSES" on Misc. Plan No. 8123/8~~, **"Proposed Leased Area During Construction" and "Proposed Parking Lease Area During Construction" on Misc. Plan No. 13128/6** *a copy of which is attached hereto, (herein called the "Leased Land"), for the purpose of landscaping and maintenance, ~~a parking lot,~~* **a** *pylon sign and garbage and recycling receptacles ~~recpetacles (if approved) and constructing and maintaining vehicular approaches (if approved) for access to and egress from the Lessee's adjoining land along Taylor Avenue~~.*

3. To strike out the following words and amend section 4 of the Agreement as follows:

   4. It shall use the Leased Land at its sole cost and expense, for the sole purpose of:
   ~~(a)~~ landscaping and maintenance, ~~a parking lot,~~ storing a garbage and recycling receptacle and a pylon ~~sign (if approved); and~~
   ~~(b) constructing and maintaining vehicular approaches (if approved) (herein called the "roadway") solely for access to and egress from the Lessee's adjoining land along Taylor Avenue at the Lessee's sole cost, effort and expense;~~
   and those purposes necessarily incidental thereto, and for no other purposes whatsoever.

4. Add the following as section 29 to the Agreement:

If required for the Waverley Underpass Project, the City, and the contractor(s) to whom the contract for the Waverley Underpass Project is awarded, will have the right to use that portion of Leased Land identified as "PROPOSED PARKING LEASE AREA DURING CONSTRUCTION" on Misc. Plan No. 13128/6 (herein called the "Parking Area"), upon providing the Lessee with 48 hours written notice. The Lessee will ensure that all vehicles are removed from the Parking Area prior to the City's required use. The City undertakes, at its sole cost and expense, to repair any damage done to the Parking Area and return it to the condition that existed prior to the City's use.

5. All other terms and conditions to remain unchanged.

6. The proposed terms and conditions of the proposed Lease Amending Agreement are subject to the final approval of the City's Standing Policy Committees and Council, or its delegated authority and the City Solicitor as to form and content and are not binding until such approval is obtained.

Mondo Food Co. Ltd. hereby agrees to enter into a Lease Agreement Amendment with the City of Winnipeg for the use of the property identified on Misc. Plan 13128/6 and in accordance with the terms and conditions as outlined herein on this Schedule "A".

MONDO FOOD CO. LTD.



Mar 31/17
Date

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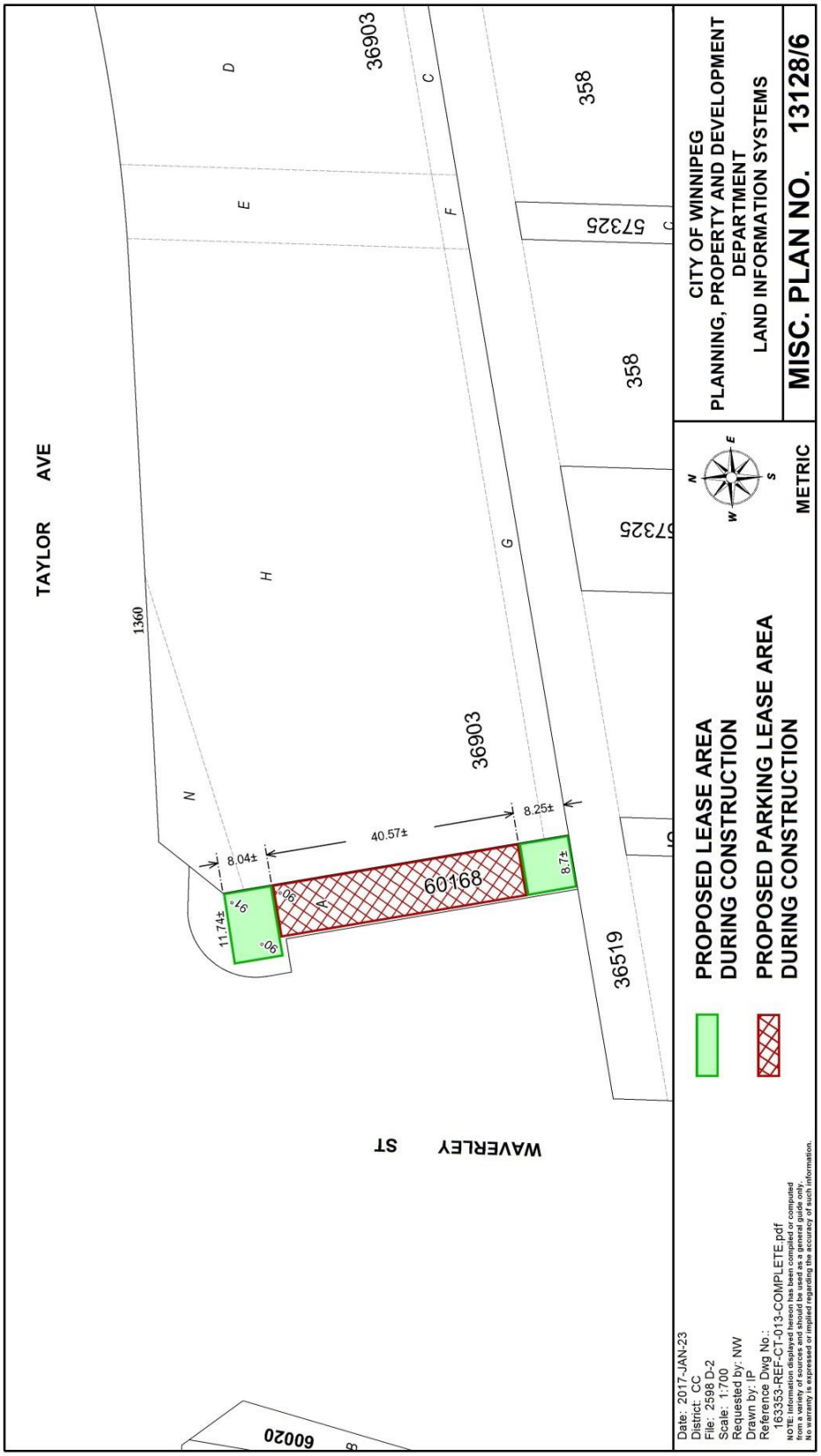
TAYLOR AVE
WAVERLEY ST
36903
358
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8.04±
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8.7±
11.74±
90°
91°
PROPOSED LEASE AREA DURING CONSTRUCTION
PROPOSED PARKING LEASE AREA DURING CONSTRUCTION
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 13128/6
Date: 2017-JAN-23
District: CC
File: 2598 D-2
Scale: 1:700
Requested by: NW
Drawn by: IP
Reference Dwg No.:
163353-REF-CT-013-COMPLETE.pdf
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