

Bill No. 298
2018

By-law No. A.-_____

A by-law to authorize a Purchase of Service Agreement between MainStreet London Revitalization Organization and The Corporation of the City of London for the provision of certain services related to management of Dundas Place; and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS sections 9 and 10 and 23.1 through 23.5 of the *Municipal Act, 2001* authorize a municipality to delegate its powers and duties under this or any other Act to a person or body;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Purchase of Service Agreement for Dundas Place Management attached as Schedule "A" to this by-law between MainStreet London Revitalization Organization and The Corporation of the City of London to provide certain management services of Dundas Place, is hereby authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the Agreement approved under section 1 above.
3. The Managing Director, Parks and Recreation, or their written designate, is hereby delegated the authority to act as the City Representative pursuant to the terms of the Agreement authorized in section 1 above.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 26, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – June 26, 2018
Second Reading – June 26, 2018
Third Reading – June 26, 2018

SCHEDULE "A"

PURCHASE OF SERVICE AGREEMENT FOR DUNDAS PLACE MANAGEMENT

THIS AGREEMENT with effect as of the [day] day of [month], 2018,

BETWEEN MainStreet London Revitalization Organization
a corporation without share capital incorporated under the laws
of the Province of Ontario
("MainStreet")

AND

The Corporation of the City of London
a municipality incorporated under the laws
of the Province of Ontario
("the City")

WHEREAS Dundas Place will be a well-maintained, active, and secure downtown destination and public space;

WHEREAS the Municipal Council approved the source of financing for the Dundas Flexible Street ("Dundas Place") project on Feb 26, 2015;

AND WHEREAS the Municipal Council adopted *Our Move Forward: London's Downtown Plan* on April 14, 2015;

AND WHEREAS the Municipal Council adopted the *Dundas Place Governance Model* on November 28, 2017;

AND WHEREAS the Municipal Council has requested that MainStreet provide management services for the operation of Dundas Place;

AND WHEREAS the City and MainStreet have agreed that MainStreet will provide the management services set out in Schedule "1" to this Agreement;

NOW THEREFORE IN CONSIDERATION OF the mutual covenants contained herein, the parties agree as follows:

1. Supply of Services

- 1.1 MainStreet will provide the services listed in Schedule "1" (the "Services") under the general direction of the City's Managing Director, Parks and Recreation or written designate (the "Managing Director").
- 1.2 When requested by the Managing Director, MainStreet will prepare a schedule showing the Services to be provided in a particular month or time period. The schedule may be revised by the Managing Director, in collaboration with MainStreet.

2. Fees

- 2.1 The City shall, when invoiced, pay fees to MainStreet in accordance with Schedule "2", provided that such fees cannot exceed the budget limits contained in Schedule "2" without the express written approval of the Managing Director.
- 2.2 The City may reimburse MainStreet for the out of pocket expenses that MainStreet incurs in carrying out its responsibilities under this agreement including, but not limited to, vehicle use charges, travel expenses, internet access charges, printing and reproduction costs, and special delivery charges.
- 2.3 MainStreet will keep records showing the time worked by individual staff members in each month, along with receipts, vouchers and other records to the satisfaction of the Managing Director.

3. Term

3.1 This Agreement shall take effect on [insert date] and continue for 18 months.

4. The Relationship

4.1 MainStreet represents that it will at all times function as an independent contractor, in compliance with its obligations under this Agreement, and is solely responsible for all statutory obligations related to the payment of wages, EI, CPP, WSIB, taxes and the like to its employees and contractors.

4.2 The Parties represent and agree that this Agreement does not operate to create a partnership, joint venture, employment arrangement, master servant relationship or any other relationship between the City and MainStreet or between the City and any employees, agent or contractor of MainStreet.

5. Termination

5.1 The City may at any time, by 30 days' written notice to MainStreet, suspend or terminate the Services or any portion thereof.

6. Indemnification

6.1 MainStreet shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the City, its employees, officers, or agents may suffer as a result of the failure of MainStreet, its employees, officers, or agents to exercise reasonable care, skill or diligence in the performance of any work or Services.

6.2 MainStreet, further covenants and agrees to save harmless and indemnify the City from and against any and all claims, assessments, charges, taxes, or other penalties or demands which may be made by the Canada Revenue Agency, the Minister of National Revenue or other official of the Government of Canada.

7. Liability Insurance

7.1 MainStreet shall, at its own expense, obtain and maintain until the termination of this Agreement, and provide the City with satisfactory evidence of:

- (a) commercial general liability insurance;
- (b) automobile liability insurance; and,
- (c) errors and omissions liability insurance such policy to provide coverage for an amount not less than Two Million (\$2,000,000.) dollars **and shall continue for no less than twelve (12) months following completion of work.**

7.2 MainStreet shall ensure that the policies shown in (a), (b) and (c) above will not be cancelled or permitted to lapse unless the City is notified in writing at least thirty (30) days prior to the effective date of cancellation or expiry.

7.3 MainStreet shall submit to the City evidence of insurance prior to the effective date of this Agreement and at each policy renewal date for the duration of the Agreement.

7.4 Failure to procure and maintain any insurance under this Agreement shall constitute a default under this Agreement.

8. Assignment

8.1 Neither Party may assign this Agreement without the prior consent in writing of the other.

9. Previous Agreements

- 9.1 This Agreement supersedes all previous agreements, arrangements or understandings between the Parties whether written or oral in connection with or incidental to this Agreement.

10. Publication, Confidentiality, Employees and Agents

- 10.1 MainStreet agrees to obtain the consent in writing of the City before publishing or issuing any information regarding the Services. MainStreet shall treat all confidential and proprietary information communicated to or acquired by it, or disclosed by the City in the course of carrying out the Services provided for herein in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*. No such information shall be used by the Service Provider on any other project without the prior written approval of the City.
- 10.2 MainStreet shall provide a draft copy of any report to the Managing Director for approval and shall not distribute the report to any other person without first obtaining the prior written approval of the Managing Director.
- 10.3 MainStreet shall require each of its employees and agents, who work under this Agreement or who have access to confidential information of the City, to comply with the requirements of this Agreement with respect to confidentiality.
- 10.4 MainStreet shall require each of its employees and agents who work under this Agreement to follow City's work rules and policies while on City premises.

11. Accessibility for Ontarians with Disabilities Act (AODA) Training

- 11.1 MainStreet shall ensure that it and all of its volunteers, employees or agents, if they deal with members of the public under this Agreement, receive training about the provision of services to persons with disabilities in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005* and its Regulations.

12. Code of Conduct and Health and Safety

- 12.1 MainStreet represents that it has reviewed and will at all times comply with the City's Code of Conduct and Health and Safety policies, as may be amended from time to time. These documents are available at www.london.ca/business/tenders-rfps/bidding-opportunities/Pages/Documents.aspx

13. Intellectual Property

- 13.1 If MainStreet develops a work or a product under this Agreement, MainStreet, hereby assigns to the City, and confirms that MainStreet, has assigned all, and not less than all, of its right, title and interest throughout the world, including reversionary interests and rights of renewal and other rights, in and to the copyright and all other rights in the work and in the product including the right to create derivative works which modify or alter the work and the product in any manner whatsoever.
- 13.2 Where MainStreet develops a work or a product under this Agreement, MainStreet hereby waives the whole of its moral rights in the work and in the product.

14. Time

14.1 MainStreet shall perform the Services expeditiously to meet the requirements of the City and shall complete any portion or portions of the Services in such order as the City may require.

15. Waiver

15.1 The failure of either Party at any time to require performance by the other Party of any provision shall in no way affect the full right to require such performance at any time thereafter, nor shall waiver by either party of any breach of the provisions be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.

16. Notice

16.1 Any notice, report, direction, request or other documentation required or permitted to be given to either party hereto shall be in writing and shall be given by personal service or by mailing by registered mail, with postage thereon fully prepaid, in a sealed envelope, to be addressed as follows:

If for MainStreet:		If for the City:	
To:	MainStreet London	To:	The Corporation of the City of London
Address:	123 King Street London ON N6A 1C3	Address:	Citi Plaza 355 Wellington Street, Suite 248 London ON N6A 3N7
Attention:	CEO and General Manager, Downtown London	Attention:	Managing Director, Parks and Recreation

Either party may by notice in writing advise of a new address for notice, which shall then be used by the party to whom it is addressed.

Any notice, report, direction, request or other document delivered personally in accordance herewith shall be deemed to have been received when given to the addressee on the day of delivery. Any notice, report, direction, request or other document mailed as aforesaid shall be deemed to have been received by and given to the addressee on the second (2nd) business day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a business day.

17. Conflict of Interest

17.1 MainStreet shall disclose in writing to the Managing Director any outside interest and commitments that may generate a conflict of interest before commencing work under this Agreement and thereafter upon any such outside interest or commitment coming to MainStreet's attention. "Conflict of Interest" means a situation in which the interests of the MainStreet or MainStreet's staff or any outside interest or commitment of MainStreet comes into conflict, or appears to come into conflict, with the interests of the City. The Managing Director shall review the conflict promptly after disclosure by MainStreet and shall give MainStreet notice of his or her determination in writing as to whether any outside interest or commitment raises a potential conflict of interest with respect to the Services, and the decision of the Managing Director shall be final. Disclosures of conflicts by MainStreet to the Managing Director shall be kept confidential except to the extent necessary to review, consider and resolve any conflict and as permitted by the *Municipal Freedom of Information and Protection of Privacy Act*. A conflict of interest may be resolved by MainStreet ceasing to carry out a portion of the Service upon the written direction of the Managing Director or by the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into the Agreement as of the date first signed or the first day of the Term, whichever is sooner.

THE CORPORATION OF THE CITY OF LONDON

By: _____
Matt Brown, Mayor

By: _____
Catharine Saunders, City Clerk

MAINSTREET LONDON

By: _____
I/We have the authority to bind this Corporation

By: _____
I/We have the authority to bind this Corporation