

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON SEPTEMBER 9, 2020
FROM:	SCOTT STAFFORD MANAGING DIRECTOR, PARKS & RECREATION
SUBJECT:	WHITE OAKS PARK – PAVILION DONATION AGREEMENT

RECOMMENDATION

That, on the recommendation of the Managing Director, Parks and Recreation, the by-law attached as Appendix “A”, **BE INTRODUCED** at the Municipal Council meeting of September 15, 2020:

- (a) to approve an Agreement with York Developments (London) Inc. to design and construct an outdoor pavilion in White Oaks Park as set out in Schedule A of the by-law, and;
- (b) to authorize the Mayor and Clerk to sign the Agreement.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

- White Oaks Park – Pavilion Donation - CPSC – August 13, 2019.

BACKGROUND

On August 27th, 2019 Council approved the donation of an outdoor pavilion to be constructed in White Oaks Park by a consortium led by York Developments London Incorporated.

The proposed pavilion construction Agreement that has been developed with York Developments (London) Inc. is included as Schedule ‘A’ to the attached By-law.

Civic Administration wishes to thank York Developments for their donation and leadership as well as recognizing their partners: Zedd Architecture, VanBoxmeer & Stranges Engineering Ltd., Ron Koudys Landscape Architects Inc., CFL Concrete Forming Limited, Roestenberg Steel Company, and Angton Electric.

This contract builds on Council’s strategic priorities:

Building a Sustainable City – This donation of a park pavilion contributes to enhancing our City infrastructure in a financially sustainable manner.

Strengthening Our Community – This pavilion would support community events and increased resident use of this gathering space for the White Oaks neighbourhood.

FINANCIAL IMPACT

There will be a new annual operating expense requirement of \$2,500 for standard structure inspections and graffiti removal. The ultimate life-cycle replacement cost of the structure requires an increase of \$7,500 to the annual capital life cycle renewal program. These additional costs will be included as part of a future assessment growth funding request allocation.

Should a tax receipt be requested by the donor, consistent with Municipal Councils' Donation Policy, the City will issue an Official Income Tax Receipt in keeping with the Income Tax Act, regulations and Canada Revenue Agency guidelines. Noting that for gifts-in-kind, the fair-market value of the donation must be supported by an independent arm's length appraisal or other third part supporting documentation, satisfactory to the City Treasurer.

SUBMITTED BY:	RECOMMENDED BY:
ANDREW MACPHERSON DIVISION MANAGER, PARKS PLANNING AND OPERATIONS PARKS AND RECREATION	SCOTT STAFFORD MANAGING DIRECTOR, PARKS AND RECREATION

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C: L. Scott Oldham, Manager Administration and Attractions
 Tim Wellhauser, Division Manager, Facilities

Att: Appendix A – By-law

Bill No.

By-law No.

A By-law to authorize an Agreement between The Corporation of the City of London and York Developments Inc.; and to authorize the Mayor and 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 it is deemed expedient for The Corporation of the City of London (the "Corporation") to enter into an Agreement with the York Developments (London) Inc. for the construction and donation of a pavilion in White Oaks Park (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the Corporation;

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

1. The Agreement attached as Schedule "A" to this by-law, being an Agreement between the Corporation of the City of London and York Developments (London) Inc. for the construction and donation of a pavilion in White Oaks Park is approved.
2. The Mayor and the City Clerk are authorized to execute the above-noted Agreement authorized and approved section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2020.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading –

SCHEDULE "A"

THIS AGREEMENT made in duplicate this day of , 2020

B E T W E E N:

YORK DEVELOPMENTS (LONDON) INC.
hereinafter called "York"

-and-

THE CORPORATION OF THE CITY OF LONDON
hereinafter called the "City"

WHEREAS subsection 10(1) of the *Municipal Act, 2001*, as amended, authorizes the City to provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001*, as amended, provides that the City may pass by-laws respecting matters that are for the economic, social and environmental well-being of the municipality;

AND WHEREAS the City has established a park known as White Oaks Park located municipally at 560 Bradley Avenue in the City of London (hereinafter called "White Oaks Park") for the social and environmental well-being of the municipality;

AND WHEREAS York has proposed to the City that an outdoor pavilion be established for the purpose of staging events for the community and the City (hereinafter called the "Pavilion");

AND WHEREAS the City considers it desirable for the public and in the public interest that the Pavilion be established and maintained in White Oaks Park;

AND WHEREAS York desires to donate materials and services for the purpose of establishing the Pavilion;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual promises, covenants and agreements hereinafter, the parties agree as follows:

1. The parties agree that the Pavilion shall be located in White Oaks Park, and the location being more particularly described in Appendix "1" attached hereto.
2. The parties agree that the final layout and design of the Pavilion shall be approved by the City of London in writing.
3. The parties agree that this agreement does not confer any interest to any person in the property of the City including but not limited to White Oaks Park, the Pavilion and all associated improvements and fixtures. The parties further agree that the Pavilion is available to the community for use.
4. York agrees that the Pavilion shall be constructed and installed at the sole risk and expense of York, including but not limited to:
 - a) design and construction of the new Pavilion structure;
 - b) construction of all new hardscape surfaces beneath and around the Pavilion, blending into the existing hard surface plaza;
 - c) restoration of site within the Work Area (dashed line on Appendix 1) that has been disturbed by construction, or damaged for access to the site;
 - d) all site works to change the orientation of the existing ball diamond, in accordance with City Standard Detail Baseball Diamond Detail SPO 11.1 and associated topsoil & seeding specifications. Re-orientation of the ball diamond (in order to accommodate the Pavilion) also includes but is not limited to

- removal and re-install existing fencing, benches, gravel infield, grading and turf restoration;
- e) extension of existing electrical power source from existing box to service the Pavilion to the City's satisfaction (see Appendix "1" for location);
- f) acting as project manager for site construction and ensuring all applicable Health and Safety requirements are met as per Ontario H&S Act, and;
- g) obtaining all necessary permits and approvals, including but not limited to a Building Permit for the Pavilion structure.

5. York agrees that it shall complete the installation of the Pavilion by no later than June 5th, 2021 (the 'outside date'). York is not entitled to make any modifications to the Pavilion by way of alterations or enhancements unless it first obtains written approval to do so from the Managing Director of Parks and Recreation or their designate.

6. The City agrees that it shall install signage, at the City's own expense with design mutually agreed upon by the City and York on the site that recognizes the contributions of York and their partners.

7. York agrees that it shall indemnify and keep the City indemnified against all actions, suits, claims, liens including any liens under the *Construction Act*, R.S.O. 1990, c. C.30, as amended, and demands which may be brought against or made upon the City and from all loss, costs, damages, charges, liens or expenses which may be incurred, sustained or paid by the City in consequence of the installation and maintenance of the Pavilion as permitted by this Agreement or otherwise by reason of this exercise by the City of the permission hereby granted. York grants to the City full power and authority to settle any such actions, suits, claims and demands on such reasonable terms as the City may deem advisable and hereby covenants and agrees with the City to pay the City on demand all monies paid by the City in pursuance of such settlement and also such sum as shall represent the reasonable costs of the City or its solicitor in defending or settling any such actions, suits, claims or demands and this Agreement shall not be alleged as a defence by York in any action by any person for actual damage suffered by reason of the permission hereby granted to maintain the encroachment hereby permitted as aforesaid over the road allowance. The City agrees to give to York written notice of any such actions, suits, claims, liens and demands promptly upon receipt thereof.

8. In the event, from time to time, that any lien including a claim for lien by a lien claimant and any certificate of action, all within the meaning of the *Construction Act*, R.S.O. 1990, c. C.30, as amended, are given to the Clerk and preserved or perfected in respect of any works or services in connection with the Pavilion, constructed and installed by or on behalf of York, York after having been given notice by any person or of becoming aware of the existence of any such preserved or perfected lien, within the time provided for, and following the procedures set out and prescribed in the *Construction Act*, shall forthwith discharge (or have vacated) any preserved or perfected claim for lien made in respect of any works or services in connection with the Pavilion, constructed and installed by or on behalf of York.

9. York shall take out and maintain with an insurer licensed to carry on business in Ontario, a commercial third party liability insurance acceptable to the City providing insurance coverage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) for any act or omission on the part of York, its employees, guests, invitees and agents arising in any way. Such policy shall include the City as an additional insured thereunder. Further, York shall take out and maintain with an insurer licensed to carry on business on Ontario, Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$ 2,000,000 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor. York agrees not to commence work until satisfactory evidence of insurance has been filed with the City's Manager of Risk Management, a completed Certificate of Insurance form 0788. This insurance will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the effective date of cancellation or expiry. The City reserves the right to request such higher limits of insurance or other types of policies appropriate to the work as the City may reasonably require.

10. The parties acknowledge and agree that White Oaks Park and the Pavilion, including any signage, features, fixtures or improvements thereon, vest in the City free and clear of all encumbrances and are the sole property of the City.

11. In order for York to receive a tax receipt for the fair market value of the in kind donation, an independent arm's length appraisal or other third party supporting documentation to the satisfactory to the City Treasurer establishing the fair market value, shall be submitted to the City.

12. The parties acknowledge and agree that the City may, in its sole discretion, remove the Pavilion from White Oaks Park.

13. The City has the right, in its sole discretion, to terminate this agreement upon written notice to York at its corporate address if, at any time or for any reason, York fails to comply with the terms and conditions of this agreement.

14. The parties agree that this Agreement shall terminate on June 30, 2021.

15. Despite the termination or expiry of this agreement, Section 11 shall survive termination or expiry of this Agreement.

16. York shall not assign this agreement without the consent, in writing, of the City, which consent may be unreasonably withheld.

17. This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective administrators, successors and assigns.

18. This Agreement shall be read with such changes in number and gender as the circumstances require.

IN WITNESS WHEREOF the City has hereunto affixed its corporate seal under the hands of its Mayor and Clerk and York has hereunto affixed its corporate seal under the hands of [title of signatory].

DATED this day of , 2020.

THE CORPORATION OF THE CITY OF LONDON

Ed Holder, Mayor

Catharine Saunders, City Clerk

YORK DEVELOPMENTS (LONDON) INC.

Ali Soufan
President

I/we have authority to bind the Corporation.

APPENDIX "1"

Location of Pavilion and Defined Work Area

