

Report to Planning and Environment Committee

**To: Chair and Members
Planning & Environment Committee**

**From: John M. Fleming
Managing Director, Planning and City Planner**

Subject: Dundas Place Manager Purchase of Service Agreement

Meeting on: June 18, 2018

Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken with respect to the Dundas Place Manager Purchase of Service Agreement:

- a) the proposed by-law attached hereto as Appendix "A" BE INTRODUCED at the Municipal Council meeting on June 26, 2018 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 the management of Dundas Place, and to authorize the Mayor and the City Clerk to execute the Agreement;
- b) the Agreement noted in a) BE APPROVED; and,
- c) the Mayor and City Clerk BE AUTHORIZED to execute the Agreement noted in a) above;

Executive Summary

Funding for a temporary Dundas Place Manager position was approved by Municipal Council in November 2017. As the Purchase of Service Agreement to facilitate the hiring of an individual for this position identifies funding over \$50,000, Municipal Council approval of the Purchase of Service Agreement is required.

Analysis

1.0 Previous Reports Pertinent to this Matter

- May 14, 2012: Civic Works Committee – Dundas Street Improvements Formulating an Implementation Plan
- August 25, 2014: Civic Works Committee – Dundas Flexible Street Scoping Study, Consulting Engineer Assignment Increase
- February 3, 2015: Civic Works Committee – Dundas Flexible Street Scoping Study
- February 26, 2015: Council – Dundas Flexible Street Project Source of Financing
- April 7, 2015: Planning and Environment Committee – Our Move Forward: London's Downtown Plan
- June 2, 2015: Civic Works Committee – Appointment of Consulting Engineer for the Dundas Place Environmental Assessment
- January 28, 2016: Strategic Priorities and Policy Committee – Downtown Infrastructure Planning and Coordination
- October 4, 2016: Civic Works Committee – Infrastructure Canada Phase Once Investments Public Transit Infrastructure Fund
- December 12, 2016: Civic Works Committee – Dundas Place Environmental Study Report
- February 7, 2017: Civic Works Committee – Dundas Place Detailed Design & Tendering Appointment of Consulting Engineer

- November 20, 2017: Planning and Environment Committee – Dundas Place Management and Dundas Place Field House

2.0 Background

On November 28, 2017, Municipal Council resolved:

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken with respect to Dundas Place Management and Dundas Place Field House:

- a) the Dundas Place, Place Management Model appended to the staff report dated November 20, 2017 as Appendix “B” BE ADOPTED;
- b) the Dundas Place Governance Model and the Dundas Place Operational Model appended to the staff report dated November 20, 2017 as Appendix “C” BE ADOPTED;
- c) subject to the approval of the 2018 Budget Amendment through the 2018 Budget Update process, appended to the staff report dated November 20, 2017 as Appendix “A”, the Civic Administration BE DIRECTED to:
 - i) provide funding through MainStreet London for the hiring of one full-time employee as the Dundas Place Manager for up to a two-year temporary term commencing in 2018;
 - ii) provide operational funding to achieve increased standards of maintenance, security and activation on Dundas Place; and,
 - iii) establish one Dundas Place Field House;
- d) the Core Area Steering Committee BE DIRECTED to set the mandate, goals, objectives, and performance measures of the Dundas Place Management entity and that the MainStreet London Board BE REQUESTED to execute management oversight of this entity; and,
- e) the Civic Administration BE DIRECTED to report back at a future Planning and Environment Committee meeting to report on results of monitoring all aspects of Dundas Place Management by mid-2019 in order to inform the development of the 2020-2023 Multi Year Budget.

3.0 Discussion

This Purchase of Service Agreement attached as Appendix “A” to this report, provides for dedicated management of Dundas Place through a three-pronged “place management” approach, coordinating and integrating maintenance, security, and activation of the space. It is critical to have a dedicated individual in place prior to the completion of phase one of Dundas Place to ensure that the Dundas Place Manager has time to become familiar with the processes and procedures that will be essential for the first day of operations. It also provides the opportunity to build relationships with City staff, business owners, and others as coordination with these parties is a key aspect of this position.

The Purchase of Service Agreement has been reviewed by City of London Human Resources and Legal Services staff and their comments have been incorporated and addressed in the attached agreement. As the Core Area Steering Committee (CASC) is the Executive Approval entity for progress on the Dundas Place capital project, the agreement has been reviewed and endorsed by the members of the CASC. In addition, the MainStreet London Board reviewed and endorsed the Purchase of Service Agreement during their board meeting on May 17, 2018.

4.0 Financial Impact

Funding for the Dundas Place Manager was approved by Council in November 2017 through the Budget Amendment process to provide for the hiring of one temporary full-time employee. The approved Budget Amendment identified \$175,000 for the temporary contract of up to two-years. As this funding exceeds \$50,000, the Purchase of Service Agreement must be approved by Council.

5.0 Conclusion

In summary, the attached Purchase of Service Agreement to facilitate the hiring of an individual to manage Dundas Place through MainStreet London implements the approved Budget Amendment for Dundas Place Management.

Prepared by:	Kerri Killen, MCIP, RPP Senior Planner, Urban Regeneration
Submitted by:	Jim Yanchula, MCIP, RPP Manager, Downtown Projects & Business Relations
Recommended by:	John M. Fleming, MCIP, RPP Managing Director, Planning and City Planner

June 4, 2018
KK/kk

Appendix A

Bill No.
2018

By-law No.

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

SCHEDULE 1 DUNDAS PLACE MANAGEMENT SERVICES OUTLINE

MainStreet will ensure that Dundas Place, which includes Dundas Street from Wellington Street to the Thames River and Market Lane Park, is active, maintained and secure through the coordination of City of London staff, Downtown London, property and business owners, and input from downtown stakeholders.

MainStreet will provide the following primary services with respect to Dundas Place:

1. Schedule and Coordinate Activities

Maintain a schedule to coordinate activities and work with all parties to resolve conflicts. Events may include, but are not limited to: festivals, special events, sidewalk sales, road closures, bollard removal/relocation, infrastructure repairs, garbage collection, street sweeping, power washing, maintenance activities, and garbage collection.

2. Conduct Daily Inspections and Report Incidents

Conduct no less than one visual inspection each working day and record the physical condition of Dundas Place. Notify appropriate City staff of any issues identified.

3. Investigate Revenue-Generating and Sponsorship Opportunities

Investigate and lead the development of revenue-generating opportunities and sponsorships to help fund the maintenance of Dundas Place and the field house operations.

4. Review Policies and Procedures

Working closely with City staff, review policies and procedures and provide recommendations to changes specific Dundas Place to ensure efficient and effective operations.

5. Recruit Events

Encourage the use of Dundas Place for appropriate events and recruit third-party organizations to host events on Dundas Place. Guide third-party organizations through the policies and procedures to help facilitate successful events.

6. Report Out

Attend meetings as a member of relevant committees or groups, such as but not limited to the Core Area Coordinating Team and the Special Events Coordinating Committee, and report out to these committees on planned activities for Dundas Place.

7. Liaise with Downtown Property and Business Owners

Work closely with the Downtown Business Improvement Association and downtown property and business owners to keep them informed of events and street closures, to help work through any issues that may arise, and to identify opportunities for businesses and events to coordinate activities.

8. Coordinate the use of the Dundas Place “Field House”

Coordinate the use of the Dundas Place “field house” with City staff and event organizers.

9. Monitor Performance Measures

Monitor the established performance measures for monitoring the success of Dundas Place. The Dundas Place Manager will be responsible for collecting the data necessary to monitor the established performance measures.

DUNDAS PLACE PERFORMANCE MEASURES

Mandate

To make Dundas Street the most exciting street in London by managing and coordinating the activation, security and maintenance of Dundas Place.

Goals	Objectives	Performance Measures	Who / How	
Activation	Active and frequently programmed	To create an active space throughout the year	<ul style="list-style-type: none"> • Number of planned events and festivals held per year* 	DPM / calendar
		To create a flexible and adaptable space for a variety of events	<ul style="list-style-type: none"> • Number of programmed days per year 	DPM / calendar
			<ul style="list-style-type: none"> • Average number of pedestrians, cyclist, and vehicles per day on weekdays and weekends during events and non-events 	Pedestrian-, cyclist- and vehicle-counting technology
	<ul style="list-style-type: none"> • Number of unique visitors to the downtown per month* 		Downtown London / Wi-Fi enabled device data collection	
	<ul style="list-style-type: none"> • Number of days per year that the street is closed to vehicle traffic 		Transportation / road closure permits	
	To create activity that benefits Dundas Street businesses and property owners	<ul style="list-style-type: none"> • Number of days per year on-street parking is available 	DPM & Transportation ¹ / bollard relocation schedule	
		<ul style="list-style-type: none"> • Number of days per year there is sidewalk activation 	DPM / daily walk-through	
		<ul style="list-style-type: none"> • Number of seasonal sidewalk patios per year* 	Realty / patio permits	
		<ul style="list-style-type: none"> • Type of event/activation, categorized (such as "food", "music", "holiday", etc.) and tracked yearly 	DPM / calendar	
	Maintenance	Maintained to the prescribed standards	To maintain a space that is clean	<ul style="list-style-type: none"> • User perception of cleanliness³
To maintain an attractive streetscape			<ul style="list-style-type: none"> • Number of business frontages upgraded per year* 	Downtown London / visual survey & incentives
		<ul style="list-style-type: none"> • User perception of maintenance³ 	Planning & Downtown London / user survey	
Security	Safe and positively perceived	To create a space that people feel safe in	<ul style="list-style-type: none"> • Number of responses to incidents by London Police Service (LPS) to Dundas Place per month 	LPS / LPS data
		<ul style="list-style-type: none"> • User perception of safety³ 	Planning & Downtown London / user survey	

DPM - Dundas Place Manager

* Performance measure identified in the Business Case

¹ Subject to change after the process for bollard relocation is established

² Targeted business as defined by the *Downtown Community Improvement Plan*

³ Measured in the summer months during the pilot, expanding to winter months thereafter

**SCHEDULE 2
SERVICE PROVIDER'S FEES**

MainStreet shall submit to the City monthly an invoice for services completed in the immediately preceding month. This invoice shall outline the time spent performing services in each month, the services performed under this Agreement, and the out of pocket expenses incurred, for which billings have been submitted.

Upon the request of the Managing Director, MainStreet shall furnish such documentation to the satisfaction of the Managing Director to verify the time spent performing services, the services performed, and the out of pocket expenses incurred.

The amount invoiced in any month shall not exceed \$12,000, without the written approval of the Managing Director.

The upset limit for services rendered during the term of this agreement is \$175,000.