

CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Environment and Sustainable Infrastructure Division

TO: Chair and Members Public Works Committee	WARD(S) AFFECTED: WARD 12
COMMITTEE DATE: October 15, 2012	
SUBJECT/REPORT NO: Village Green Park Spray Pad - License and Funding Agreements with Ancaster Rotary Clubs (PW12077) - (Ward 12)	
SUBMITTED BY: Gerry Davis, CMA General Manager Public Works Department	PREPARED BY: Cynthia Graham (905) 546-2424, Extension 2337
SIGNATURE:	

RECOMMENDATION

- (a) That Council endorse the Ancaster Rotary Clubs proposal to contribute funds to the construction of a spray pad at Village Green Park by entering into a funding partnership agreement with Ancaster Rotary Clubs, where Ancaster Rotary (AM Club) agrees to fund \$250,000 of the anticipated \$400,000 cost with the \$150,000 City contribution, including commitments to date balance being funded through existing capital program 4401056020 Village Green Park;
- (b) That staff be directed to prepare, in partnership with Ancaster Rotary (AM Club) any necessary legal documentation, in a form satisfactory to the City Solicitor and the General Manager of Public Works, prior to the construction of the spray pad;
- (c) That the funding agreement attached as Appendix "C" to Report PW12077 be approved;
- (d) That staff be directed to execute the funding agreement, attached as Appendix "C" to Report PW12077, to the satisfaction of the City Solicitor and General Manager of Public Works and the Rotary Clubs of Ancaster.

EXECUTIVE SUMMARY

In 2010, the Village Green Park Master Plan (Appendix “B”) was created, identifying a need and space for a community spray pad. The construction of a spray pad at Village Green Park fulfills Recommendation #85 of the Outdoor Recreation Facilities and Sports Field Provision Plan, that “over the short term...look to install a spray pad east of Highway 403 and another in Village Green Park”, received by Council on December 12, 2011.

In 2011, the Ancaster Rotary (AM and PM Clubs) expressed interest in fundraising towards the construction of the spray pad. City staff have been working with members of the Rotary Clubs to develop a partnership to expedite the construction of the spray pad for the users of Village Green Park. The Rotary Clubs announced their Ancaster Village Green Spray Pad Fund Raising Program on June 18, 2012. To reach the fundraising target of \$250,000, the Rotary (AM Club) wishes to submit for Ontario Trillium Foundation Funding. To date, without The Ontario Trillium Foundation Funding, the clubs have raised approximately \$130,000 in cash and in-kind donations. The City of Hamilton will not be eligible to apply for Ontario Trillium Foundation Funding directly. To assist with the Ancaster Village Green Spray Pad Fund Raising Program City staff provided a letter of endorsement to the Rotary (AM Club). The Rotary Clubs would recognize donors through plaques installed on stone benches and pathway at the spray pad area, and the Rotary Logo would be incorporated into the spray pad design.

To support the Rotary Clubs’ application to The Ontario Trillium Foundation, and to support the partnership between the City and the Rotary Clubs to create a public spray pad facility at Village Green Park, and funding agreement (Appendix “C”) will be required between the City and the Rotary (AM Club).

This report is to present the agreements for approval by Public Works Committee and Council.

Alternatives for Consideration - See Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: Through the Capital Budget program, the City has allocated funding to Village Green Park in 2010, 2011, and 2012 to support all the development at the park. The portion of contribution of the funding towards the spray pad totals \$150,000, which includes funding for design and tendering, as well as servicing to the spray pad location. The Ancaster Rotary (Am and PM Clubs) have set a fundraising goal of \$250,000 of both cash and in-kind donations towards the construction of the spray pad. Therefore, the City, through a partnership with the Rotary Clubs, will eliminate the need for future capital budget allocation to this spray pad development in the amount of \$250,000.

Staffing: Staffing impacts of 0.10 FTE and annual operating costs of \$17,000 for the spray pad were identified in the 2012 Capital Budget submission.

Legal: Legal services will be required to execute the funding agreement to support the application to Trillium by the Rotary Clubs of Ancaster.

HISTORICAL BACKGROUND

In 2010, City staff initiated a Master Plan review of Village Green Park (Appendix “B”). Opportunities for park design improvement were identified during the master plan to reflect the changing uses of the parkland. There was a soccer pitch that was no longer being programmed, and the Ancaster Tennis Club and Ancaster Lawn Bowling Club required more space for their facilities. In 2011, the Ancaster Tennis Club completed the expansion of their facility into part of the land that was formerly used as a soccer pitch, as well as a pathway connection to the adjacent rail trail. The remainder of the soccer area was identified to become the site of a future spray pad for community use.

In the spring of 2011, the Rotary Clubs of Ancaster became interested in contributing to a community initiative to build a spray pad at Village Green Park. Although the spray pad had been identified as a component of the Village Green Park Master Plan, (Appendix “B”) the ten (10) year capital budget forecast showed this project as not being funded for several years. The Rotary Clubs expressed interest in fundraising to expedite the creation of the spray pad for public use at Village Green.

Staff have been working with the Rotary Clubs of Ancaster since Spring 2011 to develop an idea of what the spray pad might be, and how much it will cost. In 2010, 2011 and 2012 capital budget programs, the City allocated funding towards Village Green Park; a total of \$150,000 was allocated towards the design, tendering and servicing component of the spray pad project, as the City’s contribution towards the completion of the spray pad.

The City and the Rotary Clubs are reviewing options for incorporating donated materials into the City’s tendering process. Donors will be recognized by donation level (to be determined) through plaques on stone seats or in the pathway by the spray pad. The Rotary logo will be incorporated into the spray pad feature. The design process will determine how these will be installed.

Innovate Now: This project ties into the “Communities - Services our communities connect with and trust” section of the Innovate Now! document. In particular, this project aligns with “Mutually beneficial charters with external customers”.

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

Office of The City Manager/Legal Services: Legal services were consulted to determine what agreement would be required to assist the Rotary Clubs’ application for Ontario Trillium Foundation Funding. Legal services will execute the legal documents required to complete the application and any additional work associated with the construction of the spray pad.

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Public Works/Operations and Waste Management: City staff have been consulted with respect to the Village Green Master Plan (Appendix "B") and will be consulted during the construction drawing preparation for the spray pad to ensure compliance with City maintenance requirements.

Rotary Club of Ancaster (AM club): Public Works staff have made a presentation to the club to discuss the project, as well as many meetings with individuals representing the club to determine details of the project and partnership.

Rotary Club of Ancaster (PM club): Public Works staff have made a presentation to the club to discuss the project, as well as many meetings with individuals representing the club to determine details of the project and partnership.

Ward Councillor: The Ward Councillor has attended the meetings with the Rotary Clubs and has been included in the master planning process for Village Green Park, and is supportive of the spray pad initiative and partnership with the Rotary Clubs.

Recreation: Spray pad program is supported by the Outdoor Recreation Facilities and Sports Field Provision Plan.

Infrastructure and Source Water Planning: ISWP staff were consulted during the stormwater analysis undertaken for the park developments, including the tennis court and the spray pad. Staff will be consulted as well during the spray pad design process for servicing analysis.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The Outdoor Recreation Facilities and Sports Field Provision Plan Recommendation #85 include reference to a spray pad facility at Village Green Park in Ancaster. The creation of the spray pad at Village Green will fulfil this portion of the recommendation.

Village Green Park is a community park, located in the heart of downtown Ancaster, behind the Ancaster Library (Appendix "A"). The play equipment at the park is well used by families; additionally, it hosts the Ancaster Tennis Club facility (recently upgraded in 2011) and the Ancaster Lawn Bowling Club. It is a busy, active park that is well suited to a spray pad facility with on-site free parking, good tree cover, complimentary adjacent activities, and its central location.

City staff started a master plan process for the park in 2010. Staff reviewed the existing facilities at the park, and determined that a spray pad would be well suited to this location, because of the close proximity to other community facilities (library) and centrally located within Ancaster.

ALTERNATIVES FOR CONSIDERATION

Council may choose not to support the license and funding agreements (Appendix "C") with the Rotary Clubs of Ancaster. If the City does not enter into this agreement, the Rotary Clubs will not be able to apply for Trillium Funding, and a significant reduction in

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the amount of donations available for the construction of the spray pad will result, impacting the scope of work for the spray pad program or delaying the project.

The alternative of not supporting the partnership with the Rotary Clubs is not recommended.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Social Development

- ◆ People participate in all aspects of community life without barriers or stigma

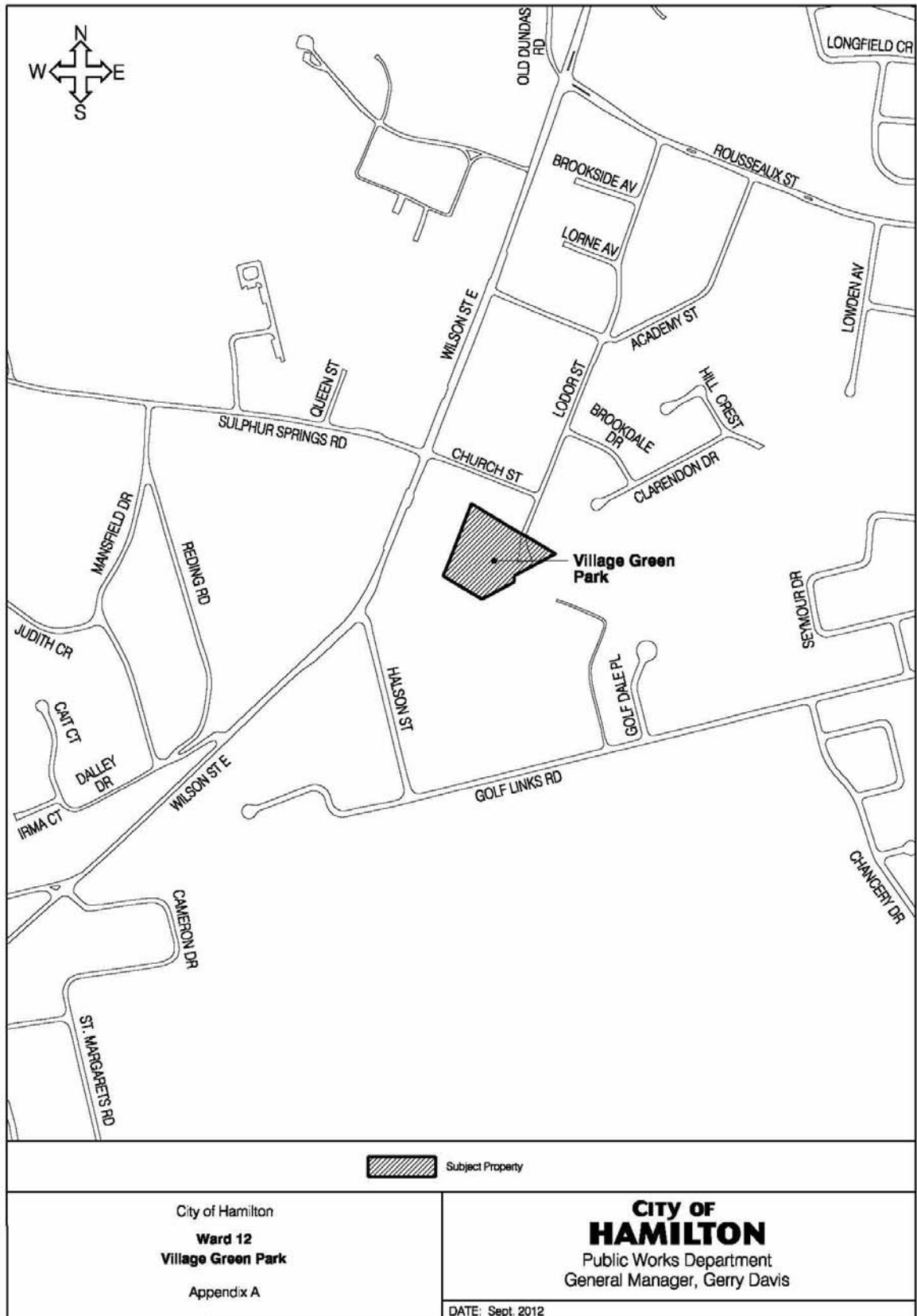
Healthy Community

- ◆ Plan and manage the built environment
- ◆ An engaged Citizenry

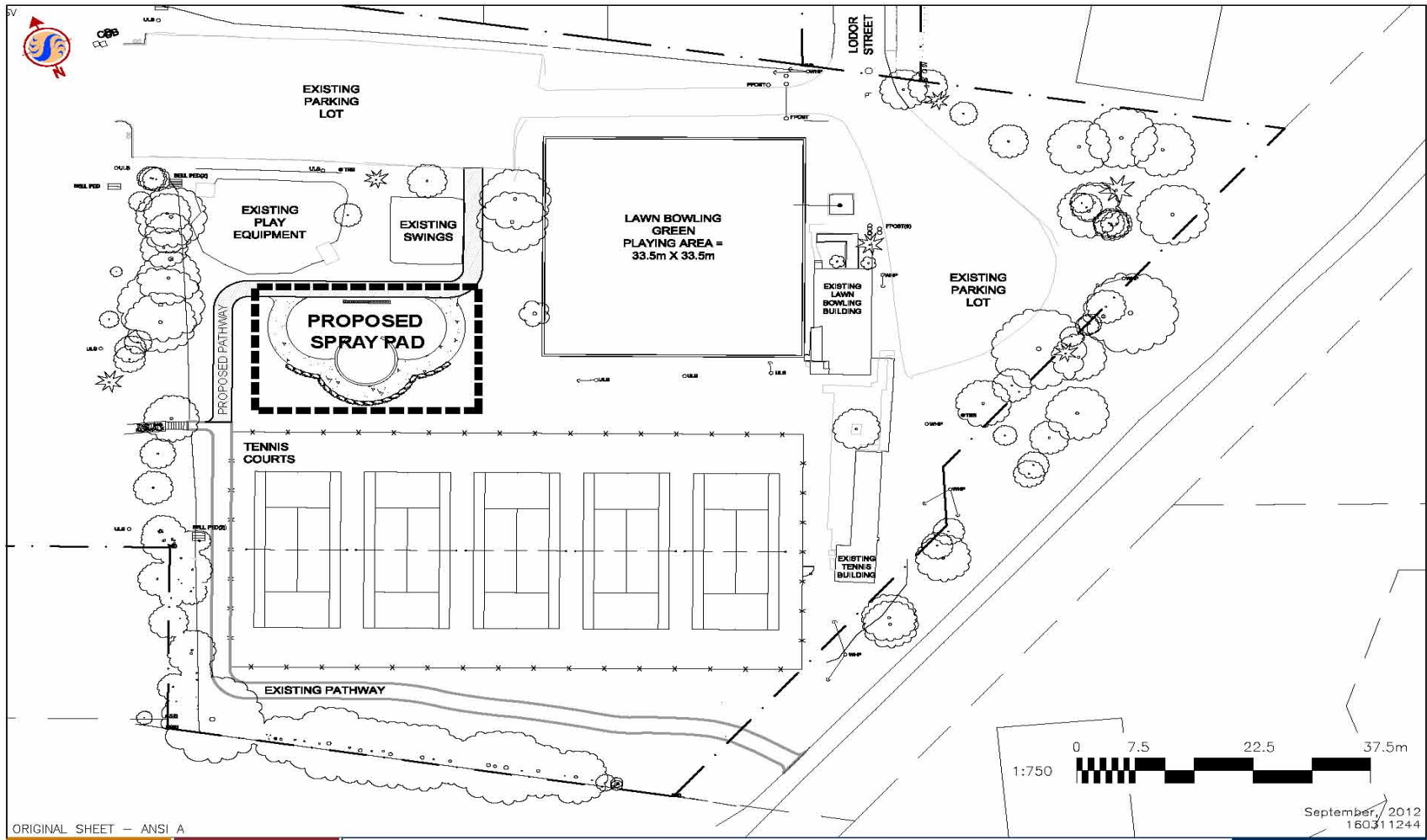
APPENDICES / SCHEDULES

Appendix "A"	Key Plan - Village Green Park
Appendix "B"	Village Green Park Master Plan
Appendix "C"	Funding Agreement - City of Hamilton and Rotary Club of Ancaster Morning

KEY PLAN - VILLAGE GREEN PARK



VILLAGE GREEN PARK MASTER PLAN



Appendix "B" - Village Green Park Master Plan

FUNDING AGREEMENT

THIS AGREEMENT made as of the day of October, 2012.

B E T W E E N :

CITY OF HAMILTON
(hereinafter called the "City")

OF THE FIRST PART

– and –

ROTARY CLUB OF ANCASTER MORNING
(hereinafter called the "Rotary")

OF THE SECOND PART

Collectively hereinafter called the "Parties"

WHEREAS the City has requested funding in the amount of \$250,000.00 from the Rotary to assist with the construction of a Village Green Spray Pad at 300 Wilson St East, Ancaster, L9G 2B9, including design and tendering, as well as servicing to the spray pad at Village Green Park (the "Project") more particularly described in Schedule "A" attached hereto;

AND WHEREAS the Project has been approved by the Council of the City of Hamilton, as part of Ontario Recreation Facilities and Sport Field Provision Plan, under the Capital Budget Program in the amount of up to \$150,000.00;

AND WHEREAS the Council for the City of Hamilton, at its meeting on , approved Item TBD of the Public Works Report TBD and agreed to support and approve the Rotary to provide funding for the Village Green Spray Pad to the City of up to \$250,000.00 (The Rotary Club will be contributing \$ 250,000 made up of materials, electrical work for the site, fundraised money from donors, other in-kind donations and money from the Ontario Trillium Foundation) upon certain terms and conditions hereinafter described;

NOW THEREFORE IN CONSIDERATION of the covenants and agreements herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS & INTERPRETATION

1.1 In this Agreement and in any schedules that may form part of this Agreement, unless there is something in the subject matter or context inconsistent therewith or defined elsewhere in this Agreement, the following terms and expressions have the following meanings:

- 1.1.1 “Agreement” means this Agreement and any schedules attached hereto;
- 1.1.2 “Applicable Laws” means all public laws, statutes, regulations, transactions, codes, acts, orders, by-laws, rules, judgments, decrees, treaties, Governmental Consents, notices, protocols, binding policies and guidelines, and requirements of all Governmental Authorities, which now or hereafter, may be applicable to and enforceable against the City or its obligations under this Agreement or any part thereof, including those relating to employment, zoning, building, life/safety, environment and health, and includes, where appropriate, any interpretation of a rule, statute, regulation, order, decree, treaty or other requirement having the force of law by any person having jurisdiction over it, or charged with its administration or interpretation.
- 1.1.3 “Asset” means any fixed or other asset constructed, rehabilitated or improved, in whole or in part, with funds contributed in accordance with the terms of this Agreement;
- 1.1.4 “Audit Report” means a financial audit report of the Project prepared by a duly qualified licensed auditor authorized to act in Ontario in accordance with this Agreement;
- 1.1.5 “Authorized Engineer” means a professional engineer licensed to practice in Ontario, hired and paid by the City for the purposes of the Solemn Declaration of Substantial Completion;
- 1.1.6 “Business Day” means a day other than a Saturday, Sunday, statutory holidays, or statutory vacation day that is observed by the City of Hamilton.
- 1.1.7 “City” means the City of Hamilton as created by the *City of Hamilton Act*, S.O. 2001, c.14.
- 1.1.8 “Rotary” means the Rotary Club of Ancaster Morning, which is an organization that takes an active interest in the civic, commercial, social and moral welfare of the community and takes an active interest in international projects, which are mandated by Rotary International.
- 1.1.9 “City Funds” means the funds made available to the City by the City in accordance with the terms of this Agreement;

- 1.1.10 "Contract" means an agreement between the City and a Third Party whereby the latter agrees to supply a product or service to the Project in return for financial consideration.
- 1.1.11 "Council" means the Council of the City of Hamilton.
- 1.1.12 "Event of Default" has the meaning ascribed to it in Article 6 hereof.
- 1.1.13 "Third Party" means any person or legal entity, other than a Party, who participates in the Project.
- 1.2 The following schedules are attached and form an integral part of this Agreement:
 - 1.2.1 Schedule "A" – Licensed Area – Description, Locations, Map and Illustrations
 - 1.2.2 Schedule "B" – Municipal Policies and Policy Requirements
 - 1.2.3 Schedule "C" – Reporting Requirements
 - 1.2.4 Schedule "D" – Schedule and Time of Acceptable Usage
 - 1.2.5 Schedule "E" – List of Items, labour and monies donated by the Rotary Club
 - 1.2.6 Schedule "F" – List of inscribed donor items and materials approved by the City of Hamilton

ARTICLE 2 - TERM

- 2.1 This Agreement shall commence and be effective as of the 1st day of October, 2012 ("Commencement Date") and shall expire on the 1st day of October, 2017, unless terminated earlier under the terms of this Agreement.
- 2.2 Notwithstanding Article 2.1, the Parties' rights and obligations, which by their nature extend beyond the expiration or termination of this Agreement, will survive any expiration or termination of this Agreement.

ARTICLE 3 – PURPOSE

- 3.1 The purpose of this Agreement is to provide funding to the Project. By funding this Project, the Rotary and the City would ensure that sufficient funds are available to allow the City to commence the project by April 1, 2013 at the earliest and complete the Project before the deadline of November 30, 2014.
- 3.2 The Parties acknowledge and agree that the Rotary's role in the Project is limited to making a financial contribution (through materials and money) and contributing electrical work for the site to the Project and that the Rotary will

have no other involvement in the Project or its subsequent operation. Notwithstanding any reporting obligation set out in this Agreement, the Rotary is neither a decision maker nor an advisor to the Project.

ARTICLE 4 – FUNDING PROVISIONS

- 4.1 Provided the City is not in default of any of the terms and conditions herein for which the Rotary has not provided written consent, and subject to the terms and conditions of this Agreement, the Rotary agrees to grant to the City, for the Project, an amount not exceeding the lesser of the following:
 - 4.1.1 a maximum amount of Two Hundred and Fifty Thousand (\$250,000.00) Canadian Dollars;
- 4.2 The Rotary may only reduce or terminate any payment under this Agreement in the event the City is in default under the terms of this Funding Agreement and Council, at a duly constituted meeting, passes a resolution or by-law requiring the reduction or termination of any payment which would otherwise become due under this Agreement and, in such event, the Rotary will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, arising from any such reduction or termination of funding.
- 4.3 If, at any time during the term of this Agreement, the City deems that it will be unable to complete the construction of the Project without committing funds above and beyond the funding available for the Project, the City shall immediately inform the Rotary thereof. After having so informed the Rotary, the City shall provide a summary of its proposed remedial measures. If the Rotary, in its sole opinion, is not satisfied with the proposed remedial measures, the Rotary may terminate or suspend the payment of Funds until such time as the Rotary is satisfied with the remedial measures being taken by the City.

ARTICLE 5 – USE OF FUNDS

- 5.1 The City agrees that Funds may be used only for costs that it incurs for the Project.
- 5.2 Under the terms of this Agreement, the City must incur all costs by November 30, 2014. For greater certainty the City shall be deemed to have "incurred costs upon such date that the City issues a purchase order and/or executes a building contract with any one or more of the City's building contractors or suppliers from time to time during the allowable period prescribed herein. The Rotary will confirm such costs if

work is completed by November 30, 2014 and final invoicing is received as set out in Article 7.6.

ARTICLE 6 – DEFAULT AND REMEDIES

- 6.1 The City may make a declaration of default if the Rotary:
 - 6.1.1 The Rotary has not completed the Project under the terms and conditions of this Agreement.
 - 6.1.2 The Rotary has submitted false or misleading information to the City, or made a false or misleading representation or statement, with the exception of an error in good faith, which it will be incumbent upon the Rotary to demonstrate to the City's satisfaction.
 - 6.1.3 The Rotary has not complied with an obligation, condition, undertaking or term of this Agreement.
 - 6.1.4 The Rotary has neglected or failed to meet its obligation to pay to the City any amount due when it becomes due under this Agreement.
 - 6.1.5 The Rotary is adjudged insolvent or bankrupt, applies for the benefit of any law relating to bankruptcy and insolvent debtors, or goes into receivership or bankruptcy.
 - 6.1.6 The Rotary is liquidated or dissolved.

The City will not declare that a default has occurred under Sections 6.1.1 to 6.1.7 unless it has given written notice to the Rotary of the condition or occurrence which, in the City's sole opinion, constitutes an Event of Default, and the Rotary is unable or unwilling, within thirty (30) days of receipt of the notice, to correct the condition or Event of Default or to demonstrate to the City's satisfaction, that it has taken such steps as are necessary to correct the condition and gives the City notice of this remedy.

- 6.2 If the City has declared the Rotary to be in default, the City may exercise one or more of the following remedies:
 - 6.2.1 Suspend its obligation to pay, or to continue to pay the costs, including any obligation to pay any amount due prior to the date of suspension, if it is related to the Event of Default;

- 6.2.2 Terminate any obligation to pay, or to continue to pay the Eligible Costs, including any obligation to pay any amount due prior to the date of termination, if it is related to the Event of Default; and
- 6.2.3 Require the Rotary to reimburse the City all or part of the Funds received by the Rotary.

ARTICLE 7 – CLAIMS AND PAYMENTS

- 7.1 Payments will be made on the basis of costs. Costs will be defined by low bidder during a fair and open tender process administered by the City according to City's Procurement Policies. Any savings from cost estimates during design will not be realized until project completion. In-kind donations are addressed in Schedule E and the implementation of the donation will be considered as "payment" from the Rotary to the City.
- 7.2 Where there is a dispute over an amount owed by either party, the Parties agree to meet and resolve the issue in a timely manner, reasonably and in good faith.

ARTICLE 8 – REPRESENTATIONS AND WARRANTIES OF THE ROTARY

- 8.1 The Rotary expressly acknowledges, agrees and warrants as follows:
 - 8.1.1 The Rotary is a legal, organized and subsisting not-for-profit registered charity corporation duly incorporated without share capital in the Province of Ontario with its head office in Ancaster, in the City of Hamilton with all requisite powers, capacities, licences and permissions under its governing legislation and the other laws applicable to it, and under any instruments or by-laws under which it was organized, to carry on the activities in which the Rotary is engaged, enter into and exercise its rights and perform and comply with its obligations under this Agreement, and that all actions conditions and things have been done, taken or fulfilled with respect thereto, that are required by law, contract or otherwise.
 - 8.1.2 The Rotary and its officers, employees and servants are each fully qualified to carry out the operations and activities associated with the Rotary and perform the terms of this Agreement and hold all requisite licences, permits and other authorizations required by law with respect thereto.
 - 8.1.3 The Rotary is not prohibited or restricted from entering into any of the obligations assumed, liabilities imposed or restrictions accepted by

the Rotary under this Agreement by any agreement, constating document, constitution, legislation, statute, act, regulation, order or otherwise.

- 8.1.4 To the best of the Rotary's information and belief and after making diligent inquiries, the Rotary is not aware of any material facts and circumstances having a bearing upon its ability to perform or comply with its obligations under this Agreement.

ARTICLE 9 – CITY'S COVENANTS

- 9.1 Without limiting or restricting in any way any other responsibilities or obligations of the City in this Agreement, the City covenants with the Rotary and agrees to:
 - 9.1.1 undertake the Project in accordance with the terms and conditions of this Agreement and all the terms of applicable legislation;
 - 9.1.2 shall execute the funding agreement to the satisfaction of the City Solicitor, the General Manager of Public Works of the City Of Hamilton and to that of the Ancaster Rotary (AM Club);
 - 9.1.3 monitor the progress of the Project at all times;
 - 9.1.4 submit duly attested claims, Progress Reports and an Audit Report in accordance with this Agreement; and
 - 9.1.5 ensure that all provisions and Schedules of this Agreement are complied with at all times.

ARTICLE 10 – RESPONSIBILITY

- 10.1 **Progress Reports.** The City must provide the Rotary with attested quarterly Progress Reports, a description to the Rotary's satisfaction of the progress made in implementing the Project, and include the following information:
 - 10.1.1 The progress of the Project against the milestones, including actual construction start date, dates of tenders and other significant Project implementation steps.
 - 10.1.2 In addition to the quarterly Progress Reports, the City shall meet with the Rotary on an as needed basis.

ARTICLE 11 – AUDIT AND EVALUATION

- 11.1 The Parties agree that auditing and reporting activities will be undertaken in accordance with this Agreement.
- 11.1.1 An Audit Report will be required in accordance with this Agreement.
- 11.1.2 The Rotary may conduct, at its expense, a compliance audit of the Project.
- 11.1.3 The City agrees to allow representatives of the Rotary access to its facilities and to Project sites upon request to make ad hoc site visits given that the Rotary representatives are equipped with proper protective equipment. The Rotary representatives shall not give site direction to contractors or subcontractors at anytime.
- 11.1.4 If, at any time, any discrepancy is identified between the amounts paid by the Rotary and the amounts actually payable under this Agreement, the appropriate adjustments shall be promptly made between the Parties. If there has been an overpayment by the Rotary the amount of the overpayment shall constitute a debt due to the Rotary and may be so recovered.

ARTICLE 12 – INSURANCE AND INDEMNITY

- 12.1 Rotary agrees to obtain and maintain in force throughout the duration of this Agreement, Commercial General Liability Insurance having an inclusive limit of not less than \$2,000,000 per occurrence and endorsed to include the City Of Hamilton as additional insured.
- 12.2 Rotary shall defend and indemnify the City against, and hold City harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees and costs: arising from any breach by Rotary of any provisions of this Agreement.
- 12.3 The City shall defend and indemnify the Rotary against, and hold the Rotary harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees and costs: arising from any breach by the City of any provisions of this Agreement.

ARTICLE 13 – GENERAL PROVISIONS

- 13.1 The City covenants that it will execute or cause to be made, done or executed, all further and lawful acts, deeds, things, devices, conveyances and assurances whatsoever for effecting the purposes and intent of this

Agreement as the Rotary shall reasonably advise or request.

- 13.2 The Rotary may provide materials inscribed with Rotary donor names to be placed in and around the Spray Pad subject to the City's Design Standards and the City's final approval as to the size, shape, content and location of the inscribed materials.
- 13.3 The Rotary may install a Rotary Club Logo on the Spray Pad subject to the City's Design Standards and the City's final approval of the size, shape, content and location of the Logo.
- 13.4 No party shall have exclusive access to the Spray Pad. At all times, it shall be available for use by the general public.
- 13.5 The City's tendering process shall commence in the winter of 2012/2013 and the Project shall at all times follow the City's Procurement Policy, similar guidelines, by-laws and rules. All Rotary in-kind donations must be submitted and approved by the City, in compliance with Procurement Policy 11, by no later than January 15, 2013 to ensure that all in-kind donations will be incorporated into the Procurement process. Rotary may be granted a two-week extension to the submission deadline of January 15, 2013 with written approval by the City.
- 13.6 Notice to be given shall, save as otherwise specifically provided, be in writing addressed to the party for whom it is intended and shall not be deemed received until actual receipt by the other party except if sent by telex or facsimile, in which case it shall be deemed received on the business day next following the date of transmission. The mailing, telex and facsimile addresses of the parties shall be:

(a) As to the Rotary:

Rotary Club of Ancaster Morning
23 Galley Road
Ancaster, ON L9G 4S8
Attention: Marty Schure, Treasurer
Fax: 905-648-8578

(b) As to City:

City of Hamilton
320 - 77 James Street North
Hamilton, ON L8R 2K3

Attention: Cynthia Graham
Fax: (905) 546-4435

- or any other mailing, telex or facsimile addresses as the parties from time to time may notify the other.
- 13.7 This Agreement and all other Security to be delivered in connection with this Agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.
- 13.8 This Agreement shall be binding on and enure to the benefit of the City, the Rotary and their respective successors and assigns, except that the either party shall not, without the prior written consent of the other party, assign any rights or obligations with respect to this Agreement.
- 13.9 Any provision of this Agreement, which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions of this Agreement which shall be deemed severable from the prohibited or unenforceable provision and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.
- 13.10 No amendment, supplement or waiver of any provision of this Agreement, nor any consent to any departure by the City, shall in any event be effective unless it shall be in writing and duly authorized by the Council for the City and even then the waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.
- 13.11 No waiver or act or omission of the Rotary shall extend to or be taken in any manner whatsoever to affect any subsequent event of default or breach by the City of any provision of this Agreement or the results or the rights resulting from it.
- 13.12 Time shall be of the essence of this Agreement.
- 13.13 This Agreement shall remain in full force and effect until the payment and performance in full of all of the City's obligations under this Agreement.
- 13.14 This Agreement constitutes the entire agreement between the parties, cancels, and supersedes any prior agreements, undertakings, declarations, representations, or letters of understanding, written or verbal in respect of it.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – EXECUTION PAGE
FOLLOWS]**

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

CITY OF HAMILTON

Signed for and on behalf of the City by:

Signed _____

Name: R. Bratina

Title: Mayor

c/s

Date _____

Signed _____

Name: R. Caterini

Title: City Clerk

c/s

Date _____

ROTARY CLUB OF ANCASTER MORNING

Signed for and on behalf of the Rotary by:

Signed _____

Name: Marty Schure

Title: Treasurer

c/s

Date _____

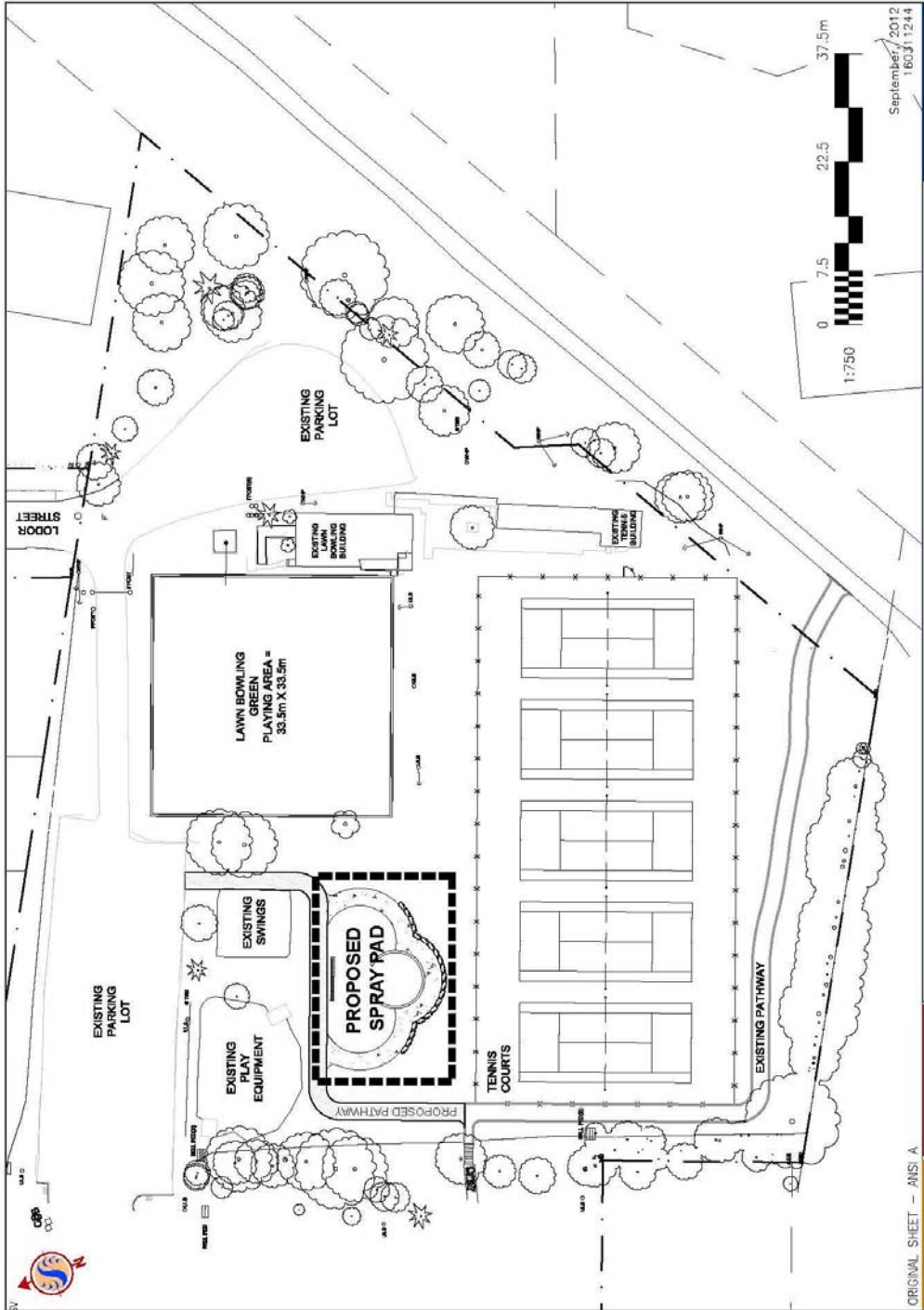
"I have the authority to bind the Corporation"

Authorized by Item _____ of the Public Works Report adopted by the Council of the City of Hamilton on the day of _____, 2012.

File Number:

Schedule "A" – Licensed Area – Description, Locations, Map and Illustrations

Village Green Park Master Plan



Schedule B – Municipal Policies and Policy Requirements

1. City of Hamilton By-Law No. 01-219: To Manage and Regulate Municipal Parks
2. City-owned spray pads are operational approximately June 30th to September 1st. All spray pads are programmed by timer to operate from 10:00 a.m. to 8:00 p.m.

Schedule C – Reporting Requirements

TO BE DETERMINED

Schedule D – Schedule and Times of Acceptable Usage

City-owned spray pads are operational approximately June 30th to September 1st.
All spray pads are programmed by timer to operate from 10:00 a.m. to 8:00 p.m.

Schedule E – List of Items donated by the Rotary Club

TO BE DETERMINED

**Schedule F – List of inscribed donor items and materials approved by the
City of Hamilton**

TO BE DETERMINED