

TO:	CHAIR AND MEMBERS BUILT & NATURAL ENVIRONMENT COMMITTEE MEETING ON AUGUST 15, 2011 7:00 pm
FROM:	PAT MCNALLY EXECUTIVE DIRECTOR of PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES
SUBJECT:	AGREEMENT with HORTICULTURAL TRADES ASSOCIATION INC. for the FUTURE ENHANCEMENT OF THE VETERANS MEMORIAL PARKWAY

RECOMMENDATION

That, on the recommendation of the Executive Director of Planning, Environmental and Engineering Services, regarding the creation of a community-led initiative to complete the planned enhancements to Veterans Memorial Parkway, the following actions **BE TAKEN**:

- a) the Agreement with Horticultural Trades Association Incorporated, operating as Landscape Ontario, (Schedule A of Attachment "A") **BE APPROVED**,
- b) a By-law **BE INTRODUCED** to authorize the Mayor and City Clerk to execute the Agreement (Appendix "A");
- c) the financing for the 2011 contribution to this agreement **BE APPROVED** as set out in the Source of Financing Report attached hereto as Appendix "B", and;
- d) Landscape Ontario **BE THANKED** for their leadership in taking on the lead role for this community-led venture; and,

It being noted that:

- The selection of Horticultural Trades Association Incorporated to lead this initiative represents a "single-source" procurement under Section 14.4 of the City's Procurement of Goods and Services Policy, and;
- Municipal financing to support the Agreement has been included in the proposed 2012 capital budget (Enhanced Veterans Memorial Parkway – PD1142) over a 5-year period and is subject to annual budget approval by Council.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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March 28, 2011 BNEC report on the status of the enhancements to the Veterans Memorial Parkway (VMP), noting the planned agreement with Horticultural Trades Association Inc – known as Landscape Ontario (LO).

BACKGROUND & AGREEMENT HIGHLIGHTS
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To provide oversight and direction for the VMP Project, a community projects steering committee was formed in 2008 and established that the main goal of the Veterans Memorial Parkway Landscape Enhancement Project is to complete it in such a way as to meet the vision of the City of London, Veterans Organizations, Community Groups and local businesses. There are three main objectives of the project:

1. Turn the Parkway into a fitting symbol that acknowledges, honours and commemorates the sacrifice and service of members of our armed forces, both past and present;
2. Demonstrate the City of London's commitment to enhancing and supporting the environment through the planting of large numbers of trees along the Parkway, and;
3. Ensure that the Parkway is a symbol of our City's commitment to future growth in the new economy.

To date, the community effort has resulted in many successful planting projects funded by local businesses, utilizing hundreds of volunteers. Partners have included:

- Numerous Veterans' groups
- Scouts Canada
- Trojan Technologies
- 3M Canada
- Local Community Associations
- ReForest London
- Starlim Canada
- London GM Dealers

A huge step forward in the implementation of the VMP Enhancement Plan occurred in 2009/10 with the installation of five stone and landscaped commemorative features and the flag feature at Bradley Avenue, funded by the Canada Infrastructure Programme. In the spring of 2011, the VMP benefitted from a large community effort to clean up the corridor as part of the City's Clean & Green Programme.

As planned, the next phase of the VMP Project has evolved into the community-led Programme. The target of this Programme is to complete the landscape enhancements over the next five years by raising approximately \$3,000,000 in donations, labour and in-kind services. This includes complete landscaping and the installation of up to 14 additional commemorative features.

To initiate and lead such a Programme requires a specific type of organization that has the capabilities to provide technical expertise, commit to a multi-year Programme and receive charitable donations. Several current City partners and other local organizations were contacted about taking on this role, but none felt that they could lead this initiative, either because it was too large, too time consuming, did not fully meet their mandate or they could not meet the financial auditing requirements.

Landscape Ontario has stepped up to take this leadership role in coordinating the efforts of this Programme and can provide of the required components of the lead agency. Selecting LO to lead this Programme would have to be considered a "single-source" (Section 14.4 (e)) award due to the unique circumstances and requirements of this venture. LO is an umbrella organization which represents the professional landscape industry, bringing valuable knowledge and technical skills to the Plan implementation. The role of LO will be to:

- establish a Board of Directors to oversee the Programme, including City and Veteran Organization representatives;
- establish and manage advisory committees to provide input into the various components of the VMP Landscape Enhancements including: financial management, planning and design, maintenance, yearly project implementation, site safety coordination and public relations;
- provide fully audited records of the financial components of the Programme;
- carry out fund raising to solicit donations from corporations, service clubs, community groups, veterans organizations, Provincial and Federal governments;
- manage promotion and marketing efforts for the Programme;
- coordinate annual planting projects;
- seek out partners to take on maintenance of any enhanced features;
- encourage public input into the overall Programme and the yearly projects, and;
- provide yearly reports to Council for approval of planned works.

To support this Programme and benefit from the tremendous partnership efforts of the community, the City's commitment to this agreement includes:

- Capital funding over five years to support the start up and administration of the Programme and to continue to contribute to yearly tree planting projects. This would be an extension to the 2011 approved capital budget project (Enhanced Veteran's Memorial Parkway -

PD1142). This funding will be requested in the 2012 capital budget, identifying what other capital project elements will be reduced in order to accommodate the increased costs of this initiative and yet maintain the overall funding envelope total. See chart below for details:

Enhanced Veteran's Memorial Parkway (PD1142)	Approved Budget	Subject to Annual Budget Approval					Total
	2011	2012	2013	2014	2015	2016	
Annual Grants to VMP Programme ¹	\$20,000	\$50,000	\$50,000	\$25,000	\$10,000	-	\$155,000
Additional Costs ²	\$30,000	\$50,000	\$50,000	\$50,000	\$40,000	\$50,000	\$270,000
Total	\$50,000	\$100,000	\$100,000	\$75,000	\$50,000	\$50,000	\$425,000

Notes: 1) As per agreement with Landscape Ontario re: VMP Programme – Section 30 (a) and (b).

2) Estimated additional City costs for landscape plans, surveys, permits, technical support, etc. as per VMP Initiative agreement – Section 26 (d) to (f).

- Direct the design and installation for major commemorative features to ensure compliance with City policies and standards;
- Continuing the existing support from several Civic Divisions on the planning, design, marketing and implementation components of the Programme;
- Install recognition signage along the VMP;
- Sit on the Board of Directors and other advisory Committees, and;
- Assume ownership of all landscape enhancements as they are completed.

Specific issues addressed in the Agreement include:

- All proposed works will be approved by Council;
- At the end of the five year term of the agreement – December 31, 2016, we will reassess whether City and LO wish to continue their efforts;
- It is anticipated that any expanded maintenance arrangements developed through the term of this agreement would transfer to the City using our existing "Adopt-a-Roadside" Programme in order to continue to benefit from community partnerships;
- All works will be the responsibility of LO to manage and supervise, but within City standards and practices;
- The agreement requires annual financial reporting of fund-raising and expenses;
- All normal insurance and liability clauses have been included to cover City interests. As the landowner, the City will be involved in any claim or lien against the project, and;
- The agreement complies with the City's Corporate Sponsorship Programme Policy 16(29A).

Outstanding is the issue of the maintenance standard along the VMP. Historically, the City has only ever mown the grass along the shoulders to a "rural" standard – once every 6-8 weeks. In lieu of asphalt, a "no-mow" grass seed was installed in the centre median in 2009, when the road was widened. However, the look of the long grass (and some weeds) was not well received by the community and it is now mowed. In the fall of 2010, Parks & Recreation Operations brought forward a report to the former Environment and Transportation Committee identifying issues with the current level of maintenance along the VMP and other road-sides seeking direction whether to upgrade the service level. At that time, Council did not support additional funding for the VMP.

After the spring 2010 community planting, the look of the long grass (and some weeds) amongst the new plantings was not acceptable to some in the community and they mowed the area. At present, several corporate offices along the VMP mow their frontages to suit their upgraded landscapes and there is some concern over the "un-mown" look as it relates to attracting additional corporate sponsors. As the Programme proceeds, the maintenance standard(s) along the VMP will be reviewed and alternatives will be brought forward to Council by the VMP Community Programme for consideration.

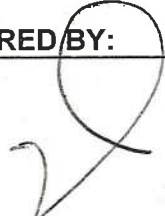
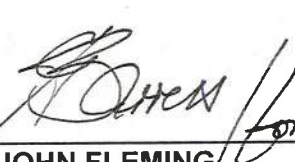
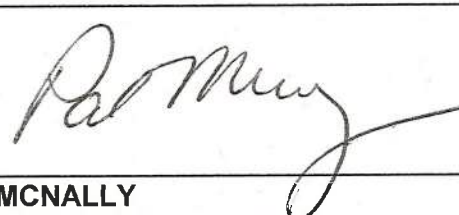
The agreement has been reviewed by the City's Legal Division, Risk Management Division, Manager of Records and Information Services, Parks & Recreation Operations Division, Purchasing Division and Financial Policy and Planning Division. For the purposes of ensuring compliance with the agreement, the Director of Land Use Planning (or designate) will be the Contract Administrator.

SUMMARY

This agreement for a community-led Programme to complete the enhancements of the Veterans Memorial Parkway ensures that the vision of the community and support for our Veterans remain foremost. It allows the Programme leaders to engage local businesses, residential communities and veteran's groups to build on the initial City-led project.

The agreement follows the Council approved concept for the implementation of the VMP Enhancement Plan and leverages the good-will and skills of the community towards the broader vision. The agreement takes advantage of the technical skills of Landscape Ontario and will ensure that the final product represents the ideal landscape for the VMP.

For a capital investment of \$425,000 over six years, the Programme will result in a landscape enhancement plan worth approximately \$3,000,000 and will acknowledge London's veterans with the largest commemorative feature in Canada.

PREPARED BY:	SUBMITTED BY:
	
ANDREW MACPHERSON MANAGER PARKS PLANNING & DESIGN	JOHN FLEMING DIRECTOR LAND USE PLANNING & CITY PLANNER
RECOMMENDED BY:	
	
PAT MCNALLY EXECUTIVE DIRECTOR- PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES	

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Attachments: Appendix A – By-law and Agreement
Appendix B – Source of Financing

cc: J. Page

Appendix A

Enacting By-law and Agreement

A By-law to authorize an Agreement between The Corporation of the City of London and Horticultural Trades Association Incorporated for the future Enhancements to the Veterans Memorial Parkway, and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 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 "City") to enter into an Agreement for the future Enhancements to the Veterans Memorial Parkway (the "Agreement");

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

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 for future enhancements to Veterans Memorial Parkway between the City and Horticultural Trades Association Incorporated is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under 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

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -

Chair and Members
Built and Natural Environment Committee

August 5, 2011
(Approve Agreement)

**RE: Agreement with Horticultural Trades Association Inc.
For the Future Enhancement of the Veterans Memorial Parkway
Capital Project PD1142 - Enhanced Veterans Memorial Parkway**

FINANCE DEPARTMENT REPORT ON THE SOURCES OF FINANCING:

Finance Department confirms that the cost of this project can be accommodated within the financing available for it in the Capital Works Budget and that, subject to the adoption of the recommendations of the Executive Director of Planning, Environmental and Engineering Services, the detailed source of financing for this project is:

<u>ESTIMATED EXPENDITURES</u>	<u>Approved Budget</u>	<u>Committed to Date</u>	<u>This Submission</u>	<u>Balance for Future Work</u>
Engineering	\$1,326	\$1,326		\$0
Construction	210,146	160,146	50,000	0
<u>NET ESTIMATED EXPENDITURES</u>	<u>\$211,472</u>	<u>\$161,472</u>	<u>\$50,000</u>	<u>\$0</u>
<u>SOURCE OF FINANCING:</u>				
Debenture Quota	1) \$50,000		\$50,000	\$0
Capital Levy	161,472	161,472		0
<u>TOTAL FINANCING</u>	<u>\$211,472</u>	<u>\$161,472</u>	<u>\$50,000</u>	<u>\$0</u>

1) **NOTE TO CITY CLERK:**

Administration hereby certifies that the estimated amounts payable in respect of this project does not exceed the annual financial debt and obligation limit for the Municipality of Municipal Affairs in accordance with the provisions of Ontario Regulation 403/02 made under the Municipal Act, and accordingly the City Clerk is hereby requested to prepare and introduce the necessary authorizing by-laws.

An authorizing by-law should be drafted to secure debenture financing for Project PD1142 - Enhanced Memorial Parkway for the net amount to be debentured of \$50,000.

EH



Alan Dunbar

Manager of Financial Planning & Policy

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Agreement

Between

Horticultural Trades Association Inc. o/a Landscape Ontario

And

The Corporation of the City of London

WHEREAS The Corporation of the City of London (hereinafter called the "City") has established and named a public highway as the Veterans Memorial Parkway (hereinafter called the "VMP");

AND 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 Municipal Council of the City considers it desirable and in the public interest to provide landscape enhancements to the VMP boulevards for the social and environmental well-being of the municipality and to recognize, commemorate and honour London's war veterans;

AND WHEREAS the Municipal Council of the City passed a resolution on November 6, 2006 endorsing landscape enhancement concepts for the VMP;

AND WHEREAS the Horticultural Trades Association Inc. o/a Landscape Ontario (the "Association"), and the City are desirous that the Association establish an umbrella community organization to encourage volunteer efforts by the citizens of the City of London for the purpose of implementing landscape enhancements along the road allowance of the VMP known as the Veterans Memorial Parkway Community Programme;

NOWHEREFORE the parties agree as follows:

PURPOSE

1. During the term of this agreement, the Association shall establish an informal umbrella organization known as the Veterans Memorial Parkway Community Programme (the "VMP Programme") for the following purposes:

- (a) to develop and complete landscape enhancements along the road allowance of the VMP as broadly described in the landscape enhancement concepts for the VMP endorsed by Municipal Council resolution passed on November 6, 2006 (the "VMP Landscape Enhancements");

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- (b) to provide, on a non-exclusive basis, an opportunity for the citizens of the City of London to contribute donations, grants or sponsorships to the Association for the purpose of completing the VMP Landscape Enhancements;
- (c) to provide for open and transparent financial management of the VMP Programme;
- (d) to engage the citizens of the City of London in the final design and planning of VMP Landscape Enhancements;
- (e) to facilitate, on a non-exclusive basis, the implementation and management of the VMP Landscape Enhancements on an annual basis;
- (f) to ensure site safety and co-ordination; and
- (g) to provide an opportunity to Municipal Council and the City to publicly acknowledge contributions of the citizens of London to the VMP Landscape Enhancements.

THE ASSOCIATION'S RESPONSIBILITIES

(l) Landscape Enhancement Plans

3. For the purposes of this agreement, the parties agree that the component areas of the road allowance of the VMP shall be defined as follows:

- (a) "travelled portion" – the paved or hard-surfaced area of the road allowance for the use of motor vehicles or pedestrians;
- (b) "shoulder" – the area of the road allowance immediately adjacent to either side of the travelled portion reserved by the City Engineer for emergency use;
- (c) "median" – the portion of the road allowance dividing the travelled portion;
- (d) "reserved area" – the area of the road allowance reserved by the City Engineer for future use;
- (e) "culvert" – the area of the road allowance immediately adjacent to the shoulder and reserved by the City Engineer for drainage purposes;
- (f) "boulevard" – the area of the road allowance between the culvert and the lot line of the property adjoining the VMP.

4. The parties agree that any and all VMP Landscape Enhancements as approved by Municipal Council shall be located in the boulevard area of the VMP.

5. The parties agree that the value of the concept work to implement and install the VMP Landscape Enhancements as endorsed by Municipal Council on November 6, 2006, was estimated at approximately \$1,600,000.00 in 2006. The parties further agree that the value of the work to fully implement and install the VMP Landscape Enhancements as contemplated by this agreement is estimated at approximately \$3,000,000.00 when completed.

6. The parties agree that the VMP Landscape Enhancements may require further refinement for full implementation and installation of the VMP Landscape Enhancements.

7. During this term of this agreement, the VMP Programme and the Association shall propose to the City Planner or his designate landscape enhancements projects developed by the Association or others for the purpose of refinement and installation of the VMP Landscape Enhancements, all of which shall be subject to Municipal Council final approval.

8. The Association, the VMP Programme, and the City Planner or his delegate shall, prior to the end of January in each year during the term of this agreement, provide a written report to

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and appear as a delegation at the relevant standing committee of Municipal Council, that will include, at a minimum, the following information:

- (a) the proposed projects to be completed by the VMP Programme and the Association in the following calendar year;
- (b) any proposed refinements to the VMP Landscape Enhancements including any prepared drawings or plans;
- (c) the names of the donors, sponsors or grantors that have contributed to the proposed projects, subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, M.56, as amended;
- (d) an estimate of the value of the donations, sponsors or grants that have been contributed to the proposed projects;
- (e) an estimate of the value of the proposed projects to be completed in the following year; and
- (f) a summary of information or advice received by the VMP Programme from the community including information and advice from the Community Advisory Committee and any Technical Committees, in connection with the proposed projects.

9. Completion of the yearly projects proposed by the Association and the VMP Programme pursuant to this Agreement shall be subject to the availability of funds raised by the Association through grants, sponsorships and donations. The parties further agree that the completion of the projects considered by the VMP Initiative or the Association shall not depend upon any funding that may or may not be granted by Municipal Council during the term of this agreement.

10. The Association and the VMP Programme shall not commence any work under this Agreement until the Association and the VMP Programme has obtained both (a) a resolution of Municipal Council approving the proposed yearly projects and (b) the written acknowledgement of the City Planner that the Association and the VMP Programme has obtained sufficient funds to complete the said approved yearly projects.

11. The Association and the VMP Programme shall complete the yearly projects within one year of the date of Municipal Council approval.

12. If, on or before December 31, 2015 and if, because of a circumstance beyond the control of the Association, the Association or the VMP Programme is delayed in completing a Municipal Council approved project within one calendar year of the date of Municipal Council approval, and if the circumstance is neither caused by the default or act of commission or omission of the Association, upon written request by the Association, the City Planner may, at his own discretion, extend the date for completion of an approved project once for a period of one calendar year without further approval by Municipal Council but such date shall not extend beyond the term of this agreement.

13. All plant materials selected for the VMP Landscape Enhancements shall be species suitable for planting along highway corridors, utilizing native species where possible.

14. Any plant materials, signage, garden features, fixtures or any other such improvements made to or installed on the boulevard of the VMP or any other part of the City's lands pursuant to this agreement, shall vest in the City free and clear of all encumbrances and are the sole property of the City.

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15. The Association shall not install any utilities in connection with any project for the VMP Landscape Enhancements, without prior written approval by the City Engineer, which may be unreasonably withheld.

16. The Association shall prepare a Traffic Management Plan(s) satisfactory to the City for use during all on-site works, including community clean-up days and planting events, to provide a safe work space for participants.

(II) The VMP Programme Organization

17. The Association shall establish the VMP Programme which shall be organized as follows:

- (a) an Board of Directors as more fully described in paragraph 18 below;
- (b) an Advisory Committee as more fully described in paragraph 20 below; and
- (c) Technical Advisory Committees as required and more fully described in paragraph 21 below;

18. The Association shall administer the VMP Programme subject to the provisions of this Agreement.

19. The Association shall document and retain records of the activities of the Association and the VMP Initiative in connection with the VMP Landscape Enhancements for a period of two years from the date of termination of this agreement, unless otherwise provided for in this agreement.

20. The Association shall provide to the VMP Programme the following:

- (a) knowledgeable representation on VMP Programme committees;
- (b) application of the extensive knowledge base of the Association's members to design, install and maintain the landscape enhancements;
- (c) operational activities such as vegetation planting, landscape maintenance and/or site coordination for the landscape enhancements, as required for the completion of a project undertaken by the VMP Programme;
- (d) a mailing address for the VMP Programme;
- (e) host a VMP Initiative web page(s) on the Landscape Ontario Web Server; and
- (f) participate in marketing and communications activities with the Executive Committee.

Board of Directors

21. The Association shall establish a Board of Directors of the VMP Programme for the purpose of providing oversight and direction for all aspects of the VMP Landscape Enhancements. The City Planner or his designate shall be a member of the Board of Director.

22. The Board of Directors shall meet quarterly or more frequently as required. The Board of Directors shall keep minutes of its meetings.

Community Advisory Committee

23. The Association and the Board of Directors shall establish a Community Advisory Committee for the purpose of providing community input on all aspects of the VMP Initiative and

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the VMP Landscape Enhancements. The number of members of the Advisory Committee shall be unlimited and membership shall be open to the citizens of the City of London. The Advisory Committee shall consult with, amongst other persons interested in the VMP Landscape Enhancements, war veteran associations in the City for the purpose of providing input from the war veteran associations on all aspects of the VMP Landscape Enhancements. The Community Advisory Committee shall meet semi-annually or more frequently if and as required. The Advisory Committee shall report in writing to the Board of Directors within thirty (30) days of holding its meeting.

Technical Advisory Committees

24. The Association and the Board of Directors may establish one or more Technical Advisory Committee(s) for the purpose of providing to the Board of Directors, expert advice in connection with the components of the VMP Landscape Enhancements, including but not limited to: financial management, planning and design, marketing, communications and public relations, fund-raising, yearly project implementation, site and safety coordination, event planning and coordination.

Administration of Work

25. The Association shall, as necessary, issue purchase orders or enter into contracts with third parties on behalf of the VMP Programme for the purpose of completing the VMP Landscape Enhancement projects approved by Municipal Council. The Association shall not make any representations whatsoever to any person that may bind the City. In addition the Association shall not issue any purchase orders to or enter into any contracts with third parties that may bind the City.

26. In the event, from time to time, that any construction lien including a claim for lien by a lien claimant and any certificate of action, all within the meaning of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, shall be registered and shall be preserved or perfected in respect of any works or services in connection with the VMP Landscape Enhancements, constructed, installed, repaired or maintained by or on behalf of the Initiative, the Association, after having been given notice by any person or of becoming aware of the existence of any such preserved or perfected construction lien, within the time provided for, and following the procedures set out and prescribed in the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended and its regulations, shall forthwith discharge (or have vacated) any preserved or perfected claim for lien made in respect of in respect of any works or services in connection with the VMP Landscape Enhancements, constructed, installed, repaired or maintained by or on behalf of the Association or the VMP Programme.

27. The Association shall, as a condition of any contract or purchase order entered into for the purpose of completing a project of the VMP Programme, include the following clauses:

- (a) The Association agrees that it shall indemnify and keep the City indemnified against all actions, suits, claims, liens including but not limited to any liens under the *Construction Lien 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

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expenses which may be incurred, sustained or paid by the City in consequence of this Agreement including the actions of the VMP Programme and the members of its committees or otherwise by reason of this exercise by the City of the permissions hereby granted; and

- (b) The Association 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 the Association in any action by any person for actual damage suffered by reason of the permission hereby granted.

28. The Association shall, at its own expense, purchase and maintain during the term of this agreement or until the termination of this agreement, as the case may be, and provide the City with evidence:

- (a) of comprehensive general liability insurance on an occurrence basis for an amount not less than two million (\$2,000,000.00) dollars and shall include the VMP Programme and the City as additional insureds with respect to the operations, acts and omissions relating to its obligations under this Agreement, such insurance policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses;
- (b) of automobile liability insurance for an amount not less than five million (\$5,000,000) dollars on forms meeting statutory requirements covering all vehicles used in any manner in connection with the performance of the terms of this Agreement;
- (c) that the policies shown above 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 reasonable require; and
- (d) that the insurance described above is in force shall be provided to the City's Manager of Risk Management on commencement of the program, on Certificate of Insurance (form 0788) and thereafter at least once annually prior to the renewal date of the policy. The City reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to program as it may reasonably required.

29. The Association may:

- (a) serve as a sponsor of the VMP Landscape Enhancements through direct donations, services-in-kind, and reduced rates for materials and services from member companies of the Association and its affiliates; and
- (b) assist the VMP Programme to recruit other sponsors for the VMP Landscape Enhancements by participating in marketing / sales strategy sessions including but not limited to sales calls and letter campaigns.

30. The Association shall administer, manage, and be solely responsible for any and all grants, sponsorships, and donations received by the Association or the VMP Programme in

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connection with the installation of the Municipal Council approved projects for the VMP Landscape Enhancements. The Association shall be solely responsible for any and all financial arrangements in connection with the VMP Programme including but not limited to any trust accounts, bank accounts, charitable tax receipts, financial statements of the VMP Programme, and the costs of a qualified auditor to prepare audited financial statement(s) as reasonably required.

CITY'S OBLIGATIONS

31. The City:
- (a) shall provide to the VMP Programme a one-time grant in fiscal year 2011 the total maximum sum of \$20,000 for the purpose of providing support for program administration;
 - (b) may consider as part of its annual budgetary exercise during the term of this agreement, future applications by the VMP Programme or the Association for further grants to the VMP Programme for the purpose of supporting program administration, estimated at the total maximum sums of \$50,000 in 2012, \$50,000 in 2013, \$25,000 in 2014 and \$10,000 in 2015, subject to final budget approval by Municipal Council;
 - (c) may advance the sums to the VMP Programme referred to in paragraph (b) above in whole or in part;
 - (d) may incur the costs of detailed landscape plans and commemorative feature designs, subject to final budget approval by Municipal Council;
 - (e) may incur the costs of any required surveys and permits required to implement the landscape and commemorative features, subject to final budget approval by Municipal Council;
 - (f) may incur the costs associated with technical support from various City departments including but not limited to Communications, Parks Planning and Design, Forestry, and Parks Operations, subject to budget approval by Municipal Council; and
 - (g) may from time-to-time consider participating in funding specific projects of the VMP Initiative, subject to final budget approval by Municipal Council.
32. The City shall provide to the Association and its contractors reasonable access to the boulevard of the VMP for the purpose of completing an approved VMP Landscape Enhancement project.
33. The City shall be solely responsible for the maintenance of the shoulders, medians, and reserved areas of the VMP at its own cost, subject to final budget approval by Municipal Council. The Association may assist the City in the development of sustainable maintenance plans for the VMP Landscape Enhancements installed on the boulevard of the VMP pursuant to this agreement.
34. Subject to final budget approval by Municipal Council, the City shall, at its own cost, remove graffiti from any fixtures and paving, if any, installed in connection with the VMP Landscape Enhancements pursuant to this agreement and further agrees that it shall repair, at its own cost, any damage to any fixtures and paving, if any, installed in connection with the VMP Landscape Enhancements pursuant to this agreement caused by vandalism. For greater certainty, the parties agree that the definition of "graffiti" is as defined in By-law PW-10, the

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Graffiti By-law, as passed by Municipal Council on May 1, 2006 and amended on June 11, 2007.

35. During the term of this Agreement, and more particularly by no later than December 31, 2016, the Association may direct to the City funds as donations for maintenance of the VMP. The City, at its sole discretion, may use the said donated funds for the purpose of the maintenance of the VMP Landscape Enhancements by no later than December 31st of the year following the receipt of the donation, or after that date may use such funds for other municipal purposes.

36. The City may:

- (a) install signage in accordance with the Sign By-law, By-law S-3774-95, or any successor by-law, at the City's own expense, that recognizes the contributions of the Association and its partners. The City shall have final approval of the size, the content and the location any proposed signs;
- (b) install signage in accordance with the Sign By-law, By-law S-3774-95, or any successor by-law, at the City's own expense, that recognizes the contributions of donors of grants, sponsorships, and donations to the VMP Programme and the VMP Landscape Enhancements. In particular the parties agree that the signage may be similar to the City's "Adopt-a-Street" program. The City shall have final approval of the size, the content and the location any proposed signs;
- (c) present certificates of appreciation for participants and donors or grants, sponsorships and donations to the VMP Programme from time to time by the Mayor;
- (d) include the Association logos and those of its partners in City press releases, articles and briefings related to the VMP Programme and the VMP Landscape Enhancements;
- (e) recognize the contribution of the Association on the City's web site; and
- (f) make City of London logos and tagline available for inclusion in VMP Programme marketing, promotion, and public relations materials subject to final approval by the City.

GENERAL

37. This agreement shall terminate upon the earlier of one of the following events occurring:

- (a) on December 31, 2016; or
- (b) either party, in its sole discretion which may be unreasonably exercised, giving the other notice in writing that this agreement shall terminate six (6) months from the date of the notice; or
- (c) immediately upon notice given by the City to the Association of the Association's breach of this agreement.

38. Upon termination of this agreement, the Association shall:

- (a) take all necessary steps to ensure that Municipal Council approved projects commenced under this agreement are completed, unless the City gives notice to the Association otherwise;
- (b) within 90 days after the date of termination of this agreement, disband the VMP Programme;
- (c) within 90 days after the date of termination of this agreement, report in writing to Municipal Council that the Agreement has terminated, advise Municipal Council as to the status of any projects in connection with the VMP Landscape Enhancements and the

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- VMP Programme, and provide Municipal Council with a copy of the final audited financial statement delivered by the Association;
- (d) within 180 days after the date of termination of this agreement, deliver to the City Clerk any plans or drawings in respect of the VMP Landscape Enhancements in the Association's possession; and
 - (e) subject to the provisions of paragraph 34 above, within 90 days after the date of termination of this agreement, consider donating to the City all remaining funds raised by the Association or the VMP Programme pursuant to this agreement, for the City's use in its sole discretion including for the purpose of maintaining the VMP Landscape Enhancements or otherwise.
39. This agreement is not a charitable purpose trust and the City may, in its sole discretion, at any time, and without notice to the Association or the VMP Programme, remove any plant materials, signage, garden features, landscaping features, fixtures or improvement on the boulevard of the VMP.
40. The effective date of any notice given under this Agreement is three (3) business days following the date of mailing. Any notice required hereby to be given shall be given:
- (a) to the Association by mailing the same, prepaid registered mail to the following address:
Horticultural Trades Association Inc. o/a Landscape Ontario
7856 Fifth Line
Milton, Ontario L9T 2Y8
Attention: President
 - (b) to the City by mailing the same, prepaid registered mail to the following address:
The Corporation of the City of London
300 Dufferin Avenue, P. O. Box 5035
London, Ontario
N6A 4L9
Attention: City Clerk
41. This agreement shall enure to the benefit of and be binding upon the parties hereto and their administrators and successors.
42. This agreement shall not be assigned.
43. The parties acknowledge that they each have read this agreement in its entirety and have obtained independent legal advice in connection with this agreement, its covenants and conditions.
44. This agreement is not subject to modifications except as approved by Municipal Council and as agreed to by the Association, in writing, and executed by the duly authorized representatives of the parties.
45. This agreement shall be read with such changes in number and gender as the circumstances require.
46. Any index or captions contained in this agreement are for reference only and in no way affect this agreement.

