

Bill No. 393  
2017

By-law No. A.-\_\_\_\_\_

A by-law to approve the LAV III Monument Agreement between Canada Company: Many Ways to Serve and The Corporation of the City of London; 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;

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

1. The LAV III Monument Agreement attached as Schedule "A" to this by-law between Canada Company: Many Ways to Serve and The Corporation of the City of London permitting the City to purchase the LAV III Monument is hereby approved.
2. The Mayor and the City Clerk are authorized to execute the LAV III Monument Agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 5, 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – September 5, 2017  
Second Reading – September 5, 2017  
Third Reading – September 5, 2017

**CANADA COMPANY: MANY WAYS TO SERVE**

**and**

**The Corporation of the City of London**

**London, Ontario**

---

**LAV III MONUMENT AGREEMENT**

Dated as of January 24, 2017

---

**STIKEMAN ELLIOTT LLP**

## TABLE OF CONTENTS

### ARTICLE 1 INTERPRETATION

Section 1.1	Defined Terms.....	1
Section 1.2	Currency. ....	2
Section 1.3	Incorporation of Schedules. ....	2
Section 1.4	References to Persons.....	2
Section 1.5	Statutes.....	2
Section 1.6	Non-Business Days. ....	2

### ARTICLE 2 DELIVERY, INSTALLATION AND MAINTENANCE

Section 2.1	Monument.....	3
Section 2.2	Preparation of the Location.....	3
Section 2.3	Delivery.....	3
Section 2.4	Installation.....	3
Section 2.5	Maintenance and Alteration.....	4

### ARTICLE 3 PURCHASE PRICE

Section 3.1	Purchase Price.....	4
Section 3.2	Payment Terms.....	4

### ARTICLE 4 DEDICATION

Section 4.1	National Inventory of Canadian Military Memorials.....	5
Section 4.2	Initial Unveiling.....	5

### ARTICLE 5 CONTROLLED GOODS

Section 5.1	Controlled Goods.....	6
Section 5.2	Nontransfer and Use Certificate.....	6

### ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Section 6.1	Mutual Representations.....	6
Section 6.2	Representations of Canada Company.....	7

### ARTICLE 7 INDEMNIFICATION, INSURANCE AND LIABILITY

Section 7.1	Indemnification.....	7
Section 7.2	Insurance.....	7
Section 7.3	Exclusion of Liability.....	7

**ARTICLE 8  
MISCELLANEOUS**

Section 8.1	Notices.....	8
Section 8.2	Amendments.....	9
Section 8.3	Waiver.....	9
Section 8.4	Entire Agreement.....	9
Section 8.5	Successors and Assigns.....	9
Section 8.6	Severability.....	9
Section 8.7	Governing Law.....	9
Section 8.8	Counterparts.....	10

**ADDENDA**

SCHEDULE A  
Legal Description of Lands or Land Use Authorization

SCHEDULE B  
Monument Location

SCHEDULE C  
Installation Guidelines

SCHEDULE D  
Nontransfer and Use Certificate

[SCHEDULE E  
Supporting Groups and Organizations<sup>1</sup>]

---

<sup>1</sup>Schedule E to be used when necessary.

## LAV III MONUMENT AGREEMENT

LAV III Monument Agreement (the “**Agreement**”) dated **January 24, 2017** between Canada Company: Many Ways to Serve (“**Canada Company**”) and **The Corporation of the City of London** (the “**Community**”).

### RECITALS:

- (1) **WHEREAS** Canada Company is a charitable, non-partisan organization that serves to build the bridge between business and community leaders and the men and women of the Canadian Armed Forces and their families;
- (2) **AND WHEREAS** Canada Company, in collaboration with the Canadian Department of National Defence, the Canadian Armed Forces, and Public Works and Government Services Canada, is the civilian administrator of a program to recognize the service of the Canadian Armed Forces in Afghanistan by providing replica Light Armoured Vehicles (“**LAV IIIs**”) as monuments (the “**Monuments**”) to qualifying communities throughout Canada;
- (3) **AND WHEREAS** the Community, having received prior approval of the Canada Company LAV III Monument selection committee (“**CCSC**”), wishes to acquire a Monument and Canada Company wishes to provide a Monument to the Community on the terms and conditions specified herein; [including, where applicable, support offered by other groups or organizations as identified in “Schedule E”];
- (4) **AND WHEREAS** the Community is either the registered owner of the lands described in Schedule “A” or has provided Canada Company the necessary land use authorization from the land owner;
- (5) **AND WHEREAS** the purpose of this Agreement is to set out the responsibilities of the Parties with respect to payment, delivery, installation, maintenance, and other matters in relation to the Monument.

**NOW THEREFORE** in consideration of the above and for other good and valuable consideration (the receipt and adequacy of which is acknowledged), the Parties agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**Section 1.1**      **Defined Terms.**

**As used in this Agreement, the following terms have the following meanings:**

“**Applicable Law**” means all applicable federal, provincial, municipal or local laws, statutes, regulations or by-laws.

“**Business Day**” means any day of the year, other than a Saturday, Sunday or holiday (which shall be any day on which Canadian chartered banks are closed for business in Toronto, Ontario).

“**CCSC**” means the Canada Company LAV III Monument selection committee.

“**Location**” means the proposed location of the Monument, as approved by Canada Company and as set forth in Schedule “B”.

“**Monument**” means a replica LAV III assembled under the supervision of Militex Coatings Inc., using parts from decommissioned and partially demilitarized LAV IIIs declared surplus by the Canadian Government.

“**NICMM**” means the National Inventory of Canadian Military Memorials.

“**Notice**” has the meaning set out in Section 8.1.

“**Party**” means any one of Canada Company and the Community.

“**Person**” means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.

### **Section 1.2 Currency.**

All references in this Agreement to dollars or to “\$” are expressed in Canadian currency unless otherwise specifically indicated.

### **Section 1.3 Incorporation of Schedules.**

The schedules attached to this Agreement form an integral part of it.

### **Section 1.4 References to Persons.**

Any reference in this Agreement to a Person includes its heirs, administrators, executors, legal representatives, successors and permitted assigns.

### **Section 1.5 Statutes.**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as it or they may have been, or may from time to time be, amended, re-enacted or replaced.

### **Section 1.6 Non-Business Days.**

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment must be made or such action must be taken on or not later than the next succeeding Business Day.

**ARTICLE 2**  
**DELIVERY, INSTALLATION AND MAINTENANCE**

**Section 2.1 Monument**

- (1) Canada Company hereby agrees to provide and the Community agrees to accept one Monument on the terms and conditions set forth herein.
- (2) Title to the Monument shall pass to the Community upon delivery of the Monument at London, Ontario.
- (3) Notwithstanding the above, Canada Company, in its sole discretion, to be exercised honestly and in good faith, may terminate this Agreement at any time before the delivery of the Monument to the Community if, in the opinion of the CCSC, the Community no longer qualifies as an approved Community. In such circumstances, the Community will be given 30 days' notice of termination and an opportunity to cure the defect or unresolved issue that has, in the opinion of the CCSC, disqualified the Community, with each Party to have no recourse against the other for any costs or losses incurred in the performance of the Agreement up to the point of termination, and any Deposit (as defined in Article 3 below) shall be returned to the Community.
- (4) This Agreement is contingent upon Canadian and U.S. government approvals and will become null and void in the event that the Community fails to receive Canadian government final approval from the Controlled Goods Program or U.S. government final approval in relation to the Nontransfer and Use Certificate described further in Article 5. The Parties agree that where it is clear that such final approval will not be granted, this Agreement will be deemed to be null and void and each Party will have no recourse against the other for any costs or losses incurred in the performance of the Agreement up to that point and any Deposit (as defined in Article 3 below) shall be returned to the Community.

**Section 2.2 Preparation of the Location**

Prior to delivery, the Community shall, at its own cost and expense and in compliance with the specifications set out in Schedule "C", prepare the concrete pad/pedestal on which the Monument will be mounted.

**Section 2.3 Delivery**

The Community shall be responsible for arranging, coordinating and paying for the delivery of the Monument from London, Ontario to the approved Location. The Community agrees to notify and consult with Canada Company on the delivery arrangements.

**Section 2.4 Installation**

The Parties agree that all costs of installation of the Monument at the Location shall be at all times the responsibility of the Community. The Monument will include one



commemorative plaque, to be installed at no cost to the Community. The cost of installing supplementary plaques, if any, shall be the responsibility of the Community. The Community's Monument installation costs include but are not limited to the preparation of the Location and the pad/pedestal, landscaping, crane costs, affixing the Monument to the pad/pedestal, and installing supplementary plaques. The Community will be responsible for contracting for the installation of the Monument and any supplementary plaques, subject to compliance with the Controlled Goods Program as well as consultation with and prior approval of Canada Company. All standard safety precautions must be taken on-site during installation and include clearing the area of tools and equipment, fencing the area if required, and ensuring that all persons present, including volunteers, paid workers and the general public, comply with Applicable Law and follow appropriate safety guidelines.

### **Section 2.5 Maintenance and Alteration**

After installation, the Community shall, at its own cost and expense, keep and maintain the whole of the Monument and associated plaques in good order, condition and repair, subject to reasonable wear and tear. The Community agrees that it will not sell, relocate, or intentionally destroy, damage, alter or change all or any part of the Monument in any way unless absolutely necessary. The Community will make all reasonable efforts to notify Canada Company of any such alteration that would significantly affect the intended character and appearance of the Monument, and in such cases Canada Company reserves the right to require the removal, at the Community's cost, of any public notice associating Canada Company or national program sponsors with the Monument.

## **ARTICLE 3 PURCHASE PRICE**

### **Section 3.1 Purchase Price**

The consideration payable by the Community to Canada Company for the Monument and one commemorative plaque FOB London, Ontario is \$17,500 plus applicable sales tax (the "Purchase Price"). [NTD: generally speaking, the applicable sales tax will be Ontario's 13% HST since the "place of supply" will be Ontario. However, communities in Alberta and the territories may wish to take advantage of delivery arrangements that will result in the place of supply being the destination province/territory - see GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax - Place of supply rules for determining whether a supply is made in a province* (June 2012)]

### **Section 3.2 Payment Terms**

- (1) Payment of the Purchase Price shall be in two parts, (i) a deposit of \$7,500 (the "Deposit") which is non-refundable except where required government approvals are not granted for reasons beyond the control of the Community, and (ii) the balance of the Purchase Price in the form of a payment of \$10,000 plus applicable sales tax (the "Balance Payment").
  - (a) **The Deposit** - Terms of payment for the Deposit shall be net thirty (30) days from the receipt of an invoice (the "Deposit Invoice") from Canada

Company, which may be sent at any time after the Community has been pre-approved by the CCSC or as the Parties may otherwise agree. Failure to provide the Deposit within thirty (30) days of receipt of the Deposit Invoice will result in the Community forfeiting its ranking for delivery of a Monument to other pre-approved communities. The Community can re-enter the approval process by notifying Canada Company that the Deposit funds are available, but, for clarity, in such a case the Community will not rank ahead of other communities whose Deposits have been received in the interim. The Community acknowledges that the Deposit will be applied toward Monument program costs and will be credited toward the Purchase Price. The Parties acknowledge and agree that the Deposit accurately reflects Monument replication and other unrecoverable program costs in connection with preparing a Monument for the Community.

- (b) **Deposit Refund** - If Canada Company, acting reasonably, is satisfied that one or more of the approvals described in Article 5 will not be granted for reasons beyond the control of the Community, also acting reasonably, the Community can submit a written request for a full refund of the Deposit ("**Refund Request**"). No Refund Request may be submitted in the first six (6) months following receipt by Canada Company of the Deposit. Canada Company will refund the Deposit, without interest, within forty-five (45) days of receipt of a valid Refund Request. The Community acknowledges that if it submits a Refund Request it will forfeit its place within the Monument program's community ranking.
- (c) **Balance Payment** - Terms of payment for the Balance Payment shall be net thirty (30) days from the receipt of an invoice (the "**Balance Payment Invoice**") from Canada Company, which may be sent at any time after Canada Company has been notified by [Militex Coatings Inc.] that the Monument ear-marked for the Community has been completed and is ready for pick-up from London, Ontario.

#### **ARTICLE 4 DEDICATION**

##### **Section 4.1 National Inventory of Canadian Military Memorials**

The Parties acknowledge and agree that the Monument will be registered with the National Inventory of Canadian Military Memorials ("**NICMM**"), administered by the Department of National Defence's Directorate of History and Heritage. Canada Company will register the Monument with NICMM in the first instance, and thereafter it will be incumbent on the Community to notify NICMM of relevant changes, if any.

##### **Section 4.2 Initial Unveiling**

The Community agrees that for the first official unveiling of the Monument ("**Initial Unveiling**"), the Community will give reasonable notice to Canada Company of the date and time of the Initial Unveiling and will give Canada Company, or its designated

representative (who may be an individual from a national program sponsor), an opportunity to speak about the LAV III Monument program at the Initial Unveiling.

## ARTICLE 5 CONTROLLED GOODS

### Section 5.1      **Controlled Goods**

The Community agrees that it will comply with all applicable requirements of the **Controlled Goods Program** (“CGP”) under the *Controlled Goods Regulations* (Canada) of the *Defence Production Act* (Canada). Such requirements may include but are not limited to applying for registration under the CGP, appointing a Designated Official (who will complete the Designated Official Certification Program), consenting to security assessments, adopting and implementing a security plan, conducting security assessment evaluations, putting in place appropriate measures to prevent the unauthorized removal and examination of the Monument, adhering to proper disposal procedures and otherwise complying with the obligations of the CGP.

### Section 5.2      **Nontransfer and Use Certificate**

The Community agrees that it will complete, sign and return to Canada Company a U.S. Department of State *Nontransfer and Use Certificate DSP-83* in the form attached at Schedule “D”.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES

### Section 6.1      **Mutual Representations**

- (1) Without limiting the generality of any other provision of this Agreement, each Party represents to the other, and acknowledges that the other is relying on such representations in entering into this Agreement, as follows:
  - (a) it has the requisite power, authority and capacity to enter into this Agreement and to perform its obligations hereunder;
  - (b) this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws of overriding effect and except that equitable remedies may only be granted in the discretion of a court of competence jurisdiction;
  - (c) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations

or any judgment, decree, order or award to which it is subject or any license, permit, approval, consent or authorization held by it; and

- (d) each Party agrees that it will not use the Monument or a Party's name in a way which might bring the Monument or a Party into disrepute.

**Section 6.2 Representations of Canada Company**

- (1) Canada Company represents and warrants to the Community, and acknowledges that the Community is relying on such representations and warranties in entering into this Agreement, as follows:
  - (a) there are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by Canada Company or, to the knowledge of Canada Company, threatened against Canada Company; and
  - (b) except as herein described, there are no actions, suits, proceedings, judgments, rulings or orders by or before any governmental authority, or, to the knowledge of Canada Company, threatened against Canada Company, that could have a material adverse effect on Canada Company or the Monument.

**ARTICLE 7  
INDEMNIFICATION, INSURANCE AND LIABILITY**

**Section 7.1 Indemnification**

The Community shall indemnify, hold harmless and defend Canada Company and its directors, officers, employees, agents, and members (collectively, "**Indemnified Parties**") from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable lawyers' fees and costs), whether or not involving a third party claim, which arise out of or relate to (1) any breach of any representation or warranty of the Community contained in this Agreement, and/or (2) any breach or violation of any covenant or other obligation or duty of the Community under this Agreement or under Applicable Law.

**Section 7.2 Insurance**

It shall be the sole responsibility of the Community to determine what insurance coverage is necessary and advisable for its own protection during the delivery, installation and thereafter and/or to fulfill its obligations under this Agreement.

**Section 7.3 Exclusion of Liability**

CANADA COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY OF THE DESIGN, FITNESS, FABRICATION AND/OR INSTALLATION OF THE MONUMENT AND IN NO EVENT SHALL CANADA COMPANY BE LIABLE FOR

ANY DAMAGES ARISING FROM ANY SUCH DEFECT OR DEFICIENCY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT.

**ARTICLE 8  
MISCELLANEOUS**

**Section 8.1 Notices.**

Any notice, direction or other communication given pursuant to this Agreement (each a "Notice") must be in writing, sent by personal delivery, courier, facsimile or email and addressed:

(1) to Canada Company at:

Toronto-Dominion Centre  
TD Bank Tower  
66 Wellington Street West  
P.O. Box 314, Suite 3100  
Toronto, ON, M5K 1K2

Attention: Shawn Deane, Project Manager, LAV III Monument Program  
Telephone: 416-869-8456, 416-865-4311  
Email: shawn.deane@canadacompany.ca, info@canadacompany.ca

(2) to the Community at:

**The Corporation of the City of London**

P.O. Box 5035 300 Dufferin Avenue, London, ON N6A 4L9

Attention: Catharine Saunders, City Clerk  
Telephone: 519-661-2500 ext 4937  
Facsimile: 519-661-5920  
Email: csaunder@london.ca

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (ii) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile or (iii) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this Section 8.1. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed.

**Section 8.2 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by all of the Parties.

**Section 8.3 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

**Section 8.4 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, including implied warranties or conditions of merchantability or fitness for a particular purpose, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement.

**Section 8.5 Successors and Assigns.**

- (1) This Agreement becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party.

**Section 8.6 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 8.7 Governing Law.**

- (1) This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

- 
- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario situated in the City of Toronto.

**Section 8.8 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

**[Remainder of page intentionally left blank. Signature page follows.]**

The Parties have executed this Agreement.

**THE CORPORATION OF THE CITY OF  
LONDON**

**THE CORPORATION OF THE CITY OF  
LONDON**

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

**CANADA COMPANY: MANY WAYS TO  
SERVE**

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Printed Name

**Signature page to LAV III Monument Agreement.**



**SCHEDULE A**

**Legal Description of Lands or Land Use Authorization**

[see following page(s)]

## **SCHEDULE B**

### **Monument Location**

The Royal Canadian Regiment Museum Outdoors Display Area

Wolseley Barracks

701 Oxford Street East,

London, Ontario

N5Y 4T7

## **SCHEDULE C**

### **Installation Guidelines**

#### **Installation guidelines**

[description of structural requirements and dimensions of concrete pad/pedestal and anchoring, load bearing and stability requirements for installation of the Monument; see following page(s)]

**SCHEDULE D**

**Nontransfer and Use Certificate**

[see following page(s)]

**[SCHEDULE E**  
**Supporting Groups and Organizations]**