



TO:	CHAIR AND MEMBERS BUILT & NATURAL ENVIRONMENT COMMITTEE MEETING ON SEPTEMBER 12, 2011
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 Program to complete the planned enhancements to Veterans Memorial Parkway, the following report **BE RECEIVED** for consideration.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

- August 15, 2011 BNEC report outlining the pertinent details of the intent and purpose of the recommended agreement with Landscape Ontario.
- 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

In anticipation of receiving a signed version of the Agreement in time for the August 15, 2011 BNEC meeting, staff submitted a report for the approval of the Agreement.

The August 15, 2011 report included a draft agreement for the purpose of authorizing Horticultural Trades Association Inc, (operating as Landscape Ontario) to lead the community-led landscape enhancement Program for the Veterans Memorial Parkway. At the meeting, LO's representative relayed some concerns regarding the text of the Agreement. The report and recommendations were approved by Council (below), noting that the formal Agreement was referred back to staff to resolve any outstanding issues and to forward the enacting by-law and Agreement to Council.

- (a) the attached proposed by-law (Appendix 'A') **BE INTRODUCED** at a future meeting of the Municipal Council to authorize an agreement between The Corporation of the City of London and the Horticultural Trades Association Incorporated, operating as Landscape Ontario, to lead the Veterans Memorial Parkway Community Programme and to authorize the Mayor and the City Clerk to execute the Agreement;
- (b) the approval given herein **BE CONDITIONAL** upon the Corporation entering into a formal Agreement with the Horticultural Trades Association Incorporated;
- (c) the Source of Financing for the City of London's 2011 financial obligations, as detailed in Section 31 of the Agreement **BE APPROVED** as set out in the attached Source of Financing Report (Appendix 'B');
- (d) the Civic Administration **BE AUTHORIZED** to undertake all the administrative acts that are necessary in connection with this Agreement; and,
- (e) Landscape Ontario **BE THANKED** for taking a leadership role for this community-led venture;

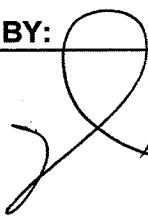

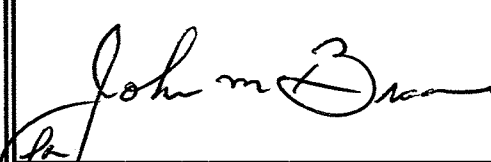


ISSUES RESOLUTION

The City's Legal Division has discussed the Agreement in detail with Landscape Ontario's lawyer and have revised several of the agreement clauses to address their concerns. Several clauses have had minor changes to their wording. Other changes relate to confirming the City's financial commitment to the Program over the 5 year term of the Agreement and addressing Landscape Ontario's potential liability when undertaking works on City lands.

The revised agreement as sent to Landscape Ontario on September 1, 2011 is attached for your reference as Appendix "A". Should there be a signed copy of this document or a revised document returned to the City prior to the September 12, 2011 BNEC meeting, it will be added to the agenda.

The City Solicitor's Office will be providing a confidential report to be addressed in-camera regarding the Agreement clauses.

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	



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 Program;

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 Program (the "VMP Program") for the following purposes:

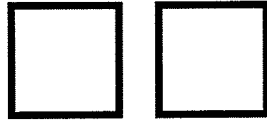
- (a) to develop and complete landscape enhancements along the road allowance of the VMP as broadly described in the landscape enhancement concepts for the VMP endorsed by Municipal Council resolution passed on November 6, 2006 (the "VMP Landscape Enhancements");
- (b) to provide, on a non-exclusive 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 Program;
- (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 Program 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 Program, 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 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 Program 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 Program 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 Program 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 Program shall not commence any work under this Agreement until the Association and the VMP Program 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 Program has obtained sufficient funds to complete the said approved yearly projects.

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

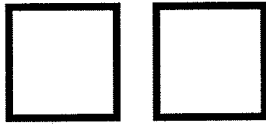
12. If, on or before December 31, 2015 and if, because of a circumstance beyond the control of the Association, the Association or the VMP Program is delayed in completing a Municipal Council approved project within one calendar year of the date of Municipal Council approval, and if the circumstance 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.

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 for all projects managed by the Program.

(II)

The VMP Program Organization

17.

The Association shall establish the VMP Program which shall be organized as follows:

(a)

a Board of Directors as more fully described in paragraph 21 below;

(b)

an Advisory Committee as more fully described in paragraph 23 below; and

(c)

Technical Advisory Committees as required and more fully described in paragraph 24 below;

18. The Association shall administer the VMP Program 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 Program the following:

(a)

knowledgeable representation on VMP Program 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 Program;

(d)

a mailing address for the VMP Program;

(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 Program 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 Directors.

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 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.

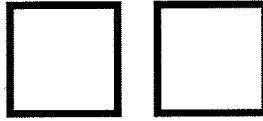
Administration of Work

25.

The Association shall, 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 Program and the City as additional insured's 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 reasonably 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.

26.

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 Program 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.

27. The Association shall administer, manage, and be solely responsible for any and all grants, sponsorships, and donations received by the Association or the VMP Program in 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 Program including but not limited to any trust accounts, bank accounts, charitable tax receipts, financial statements of the VMP Program, and the costs of a qualified auditor to prepare audited financial statement(s) as reasonably required.
CITY'S OBLIGATIONS

28.

The City:

(a) shall provide to the VMP Program 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) shall as part of its annual budgetary exercise during the term of this agreement, provide further grants to the VMP Program 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;

(c) may advance the sums to the VMP Program referred to in paragraph (b) above in whole or in part;

(d) shall incur the costs of detailed landscape plans and commemorative feature designs;

(e) shall incur the costs of any required surveys and permits required to implement the landscape and commemorative features;

(f) shall 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; and

(g) shall from time-to-time consider participating in funding specific projects of the VMP initiative, subject to final budget approval by Municipal Council.

29.

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.

30. 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.



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

32. 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.

33.

The City shall:

- (a) install signage in accordance with the Sign By-law, By-law 5-3774-95, 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 5-3774-95, 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 Program 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 Program 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 Program 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 Program marketing, promotion, and public relations materials subject to final approval by the City.
- GENERAL

34.

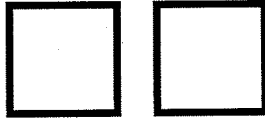
This agreement shall terminate upon the earlier of one of the following events occurring:

- (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.

35.

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 Program;
- (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 VMP Program, 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 32 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 Program 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.

36. 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 Program, remove any plant materials, signage, garden features, landscaping features, fixtures or improvement on the boulevard of the VMP.

37. 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 L6T 2Y8
Attention: President and Executive Director

(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 419
Attention: City Clerk

38. This agreement shall ensure to the benefit of and be binding upon the parties hereto and their administrators and successors.

39. This agreement shall not be assigned.

40. 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.

41. 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.

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

43. Any index or captions contained in this agreement are for reference only and in no way affect this agreement.

44. This agreement shall constitute the entire agreement between the parties and the parties acknowledge that there is no representation, warranty, collateral agreement or condition affecting this agreement other than as set out in this agreement.

45. This agreement shall be construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the City has hereunto affixed its corporate seal under the hands of its Mayor and Clerk and Horticultural Trades Association Inc. c/o Landscape Ontario has hereunto affixed its corporate seal under the hands of President and Executive Director.

DATED this day of ,2011.

THE CORPORATION OF THE CITY OF LONDON

Joe Fontana, Mayor

Catharine Saunders, City Clerk

HORTICULTURAL TRADES ASSOCIATION INC.
o/a Landscape Ontario

c/s
Name:
Position: President
I/we have authority to bind the Corporation

c/s
Name:
Position: Executive Director

I/we have authority to bind the Corporation