

Bill No. 110
2012

By-law No. A.-

A By-law to approve and adopt the standard form for Purchase of Services Agreement for Community Services; and to authorize the Executive Director of Community Services to insert information and execute agreements which employ this form.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

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

1. The standard form Purchase of Services Agreement for Community Services, to be entered into between The Corporation of the City of London and service providers providing services to The Corporation of the City of London (less than \$50,000 not including taxes), attached as Schedule A to this by-law, is approved and adopted as the standard form for all such agreements.
2. The Executive Director of Community Services, or written designate, is delegated the authority to insert the following information into the standard from agreement approved in section 1 above:
 - (a) Page 1 - date of the Agreement;
 - (b) Page 1 – Name of Service Provider;
 - (c) Page 4 – clause 17.1 – name and address of Service Provider;
 - (d) Page 5 – name of Executive Director of Community Services;
 - (e) Page 5 – name of Service Provider;
 - (f) Schedule “1” – description of Services to be provided by Service Provider; and
 - (g) Schedule “2” – payment details, including budget limit.
3. The Executive Director of Community Services is delegated the authority to execute the agreement approved under section 1 above and modified under section 2 above, provided that any agreement does not require additional funding or such funding is provided for in the City’s current budget.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on March 20, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

SCHEDULE "A"

COMMUNITY SERVICES STANDARD PURCHASE OF SERVICES AGREEMENT (<\$50,000)
THIS IS A STANDARD FORM AGREEMENT – TERMS CANNOT BE ALTERED WITHOUT THE APPROVAL OF MUNICIPAL COUNCIL

THIS AGREEMENT MADE THIS <insert day> DAY OF <insert month> , 20 <insert year>

BETWEEN

<INSERT NAME OF PARTY>
("the Service Provider")

AND

The Corporation of the City of London
a municipality incorporated under the laws
of the Province of Ontario:
("the City")

WHEREAS the Service Provider and the City have agreed that the Service Provider will provide its expertise and services to the City as set out in Schedule "1" and subject to this Agreement;

NOW THEREFORE IN CONSIDERATION OF the mutual covenants contained herein the parties agree as follows:

1. Supply of Services

- 1.1 The City retains the Service Provider to provide those services itemized in clause 3.1 ("Services"), and the Service Provider agrees to provide the Services herein under the general direction and control of the City's Executive Director - Community Services or written designate ("Executive Director").
- 1.2 The Service Provider agrees that during the term of this Agreement it will provide its Services on a non-exclusive basis.
- 1.3 It is acknowledged by the City that this is not an exclusive Agreement with the Service Provider and that the Service Provider provides similar services to other companies.
- 1.4 The Service Provider agrees to supply at its sole cost and expense all staff, equipment, vehicles, accommodations and technical assistance necessary to perform the Services to be furnished by the Service Provider under this agreement and shall assume all overhead expenses in connection therewith, except as approved under clause 2.2.
- 1.5 When required by the City, the Service Provider shall provide for approval by the Executive Director a schedule showing Services to be completed in each month or such other time frame as determined by the Executive Director.

2. Service Provider's Fees

- 2.1 The City shall pay the Service Provider in accordance with the provisions set forth in Schedule "2" and that payment will not exceed the budget limits contained in Schedule "2" without the express written agreement of the Executive Director.
- 2.2 In addition to the fee, the City may reimburse Service Provider at cost for out of pocket expenses that it expects in carrying out this agreement including but not limited to vehicle use charges, travelling and internet charges, printing and reproduction costs, and special delivery charges, provided that same are pre-approved in writing by the Executive Director.
- 2.3 The Service Provider shall keep time dockets showing all time worked in each month, records, receipts, vouchers and documents as will verify to the satisfaction of the Executive Director the time spent performing services in each month, the services performed and the out-of-pocket expenses incurred in accordance with this Agreement for which billings have been submitted. Upon the request of the Executive Director, the Service Provider shall furnish such documentation to the satisfaction of the Executive Director to verify the time spent performing services, the services performed and the out-of-pocket expenses incurred.
- 2.4 The Service Provider will submit to the City an invoice for each installment, approved out-of-pocket expenses and applicable taxes for all Services completed in the immediately preceding month.

3. Services Provided

- 3.1 The Service Provider shall deliver to the City the Services as set out in Schedule "1" as changed, altered, removed from, or added to in accordance with this Agreement.
- 3.2 In addition to the Services set out in Schedule "1" the Service Provider shall include:
- (a) Methodology and timeline to complete the project;
 - (b) Demonstrated experience and qualifications required to perform project; and
 - (c) List of personnel who will be directly involved in the completion of the project.

4. Term

- 4.1 This Agreement shall take effect on signing by both parties and will continue until the earliest of the completion of the deliverables outlined in clause 3.1, one year after the signing by both parties, or termination by either party under clause 6.1.

5. The Service Provider/City Relationship

- 5.1 The Service Provider, in compliance with its obligations under this Agreement, shall be solely responsible for all statutory obligations related to the payment of CPP, WSIB, and taxes.
- 5.2 The parties hereto are each independent of the other and this Agreement shall not operate to create a partnership, joint venture, employment arrangement, master servant relationship or any other similar relationship between the City and the Service Provider or between the City and any employees, agent or contractor of the Service Provider.

6. Termination

- 6.1 The City may at any time by two (2) days' written notice to the Service Provider suspend or terminate the Services or any portion thereof at any stage of the Agreement. Upon receipt of such written notice, the Service Provider shall perform no further Services or incur any disbursements other than those reasonably necessary to close out its Services.
- 6.2 In the event of termination in accordance with clause 6.1, the City shall pay to the Service Provider only for those Services completed and disbursements incurred up to the date notice is given, and the Service Provider will accept such payment in full satisfaction for all services performed.

7. Changes and Additional Services

- 7.1 With the consent of the Service Provider, the Executive Director may in writing, at any time after the execution of this Agreement or the commencement of the Services, delete, extend, increase, vary or otherwise alter the Services forming the subject of this Agreement.

8. Indemnification

- 8.1 The Service Provider shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the City, its employees, officers, or agents may suffer as a result of the failure of the Service Provider, its employees, officers, or agents to exercise reasonable care, skill or diligence in the performance or rendering of any work or services required by this Agreement.
- 8.2 The Service Provider further covenants and agrees to save harmless and indemnify the City from and against any and all claims, assessments, charges, taxes, or other penalties or demands which may be made by the Canada Revenue Agency, the Minister of National Revenue or other official of the Government of Canada, requiring the Corporation to pay income tax, charges or penalties under the Income Tax Act (Canada) in respect of any claims, demands and amounts payable in accordance with the contract which may be made by, on behalf of, or related to Services Canada Skills Development and Human Resources Development Canada or by any other government agency under any applicable statute and regulation with respect to any amounts which may in the future be found to be payable by the City on the Service Provider's behalf.

9. Liability Insurance

- 9.1 The Service Provider shall, at its own expense, obtain and maintain until the termination of this Agreement, and provide the City with satisfactory evidence of:

- (a) commercial general liability insurance on an occurrence basis covering the Service Provider, its officers, servants, contractors, Service Providers, and agents for an amount not less than Two Million (\$2,000,000.) dollars and shall include the City as an additional insured with respect to all of the Service Provider's operations, acts and omissions relating to its obligations under this Agreement, such 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) automobile liability insurance for an amount not less than Two Million (\$2,000,000.) dollars on forms meeting statutory requirements covering all vehicles used in any manner in connection with the performance of the terms of this Agreement and;
- (c) errors and omissions liability insurance covering the work and services described in this Agreement, such policy to provide coverage for an amount not less than Two Million (\$2,000,000.) dollars **and shall continue for no less than twelve (12) months following completion of work.**

9.2 The Service Provider shall ensure that the policies shown in (a), (b) and (c) above will not be cancelled or permitted to lapse unless the City is notified in writing at least thirty (30) days prior to the effective date of cancellation or expiry.

9.3 The Service Provider shall submit to the City evidence of insurance, satisfactory to the Manager of Risk Management or designate prior to the effective date of this Agreement and the Service Provider shall further provide that evidence of the continuation of said insurance is filed at each policy renewal date for the duration of the Agreement.

9.4 The City reserves the right to request such higher limits of insurance or other types of insurance as it may reasonably require from time to time.

9.5 Failure to procure and maintain any insurance under this Agreement shall constitute a default under this Agreement.

10. Assignment

10.1 Neither party may assign this Agreement without the prior consent in writing of the other.

11. Previous Agreements

11.1 This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to this Agreement.

12. Publication, Confidentiality, Employees and Agents

12.1 The Service Provider agrees to obtain the consent in writing of the City before publishing or issuing any information regarding the Services. The Service Provider shall treat all confidential and proprietary information communicated to or acquired by the Service Provider, or disclosed by the City in the course of carrying out the Services provided for herein in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*. No such information shall be used by the Service Provider on any other project without the prior written approval of the City.

12.2 The Service Provider shall provide a draft copy of any report to the Executive Director for approval and shall not distribute the report to any other person without first obtaining the prior written approval of the Executive Director.

12.3 The Service Provider shall require each of its employees and agents, who work under this Agreement or who have access to confidential information of the City, to comply with the requirements of this Agreement with respect to confidentiality.

12.4 The Service Provider shall require each of its employees and agents who work under this Agreement to follow City's work rules and policies while on City premises.

13. Accessibility for Ontarians with Disabilities Act (AODA) Training

13.1 The Service Provider shall ensure that it and all of its volunteers, employees or agents, if they deal with members of the public under this Agreement, receive training about the provision of services to persons with disabilities in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005* and its Regulations.

14. Intellectual Property

- 14.1 Where the Service Provider develops a work or a product under this Agreement, the Service Provider hereby assigns to the City, and confirms that the Service Provider has assigned all, and not less than all, of its right, title and interest throughout the world, including reversionary interests and rights of renewal and other rights, in and to the copyright and all other rights in the work and in the product including the right to create derivative works which modify or alter the work and the product in any manner whatsoever.
- 14.2 Where the Service Provider develops a work or a product under this Agreement, the Service Provider hereby waives the whole of its moral rights in the work and in the product.
- 14.3 Where the Service Provider develops a work or a product under this Agreement, the Service Provider;
 - (a) represents and warrants that the use of the work or product does not violate any copyright or infringe third party intellectual property rights;
 - (b) covenants that the use of the work or product will not violate any copyright or infringe third party intellectual property rights;
 - (c) agrees to indemnify the City of any liability, injury or damage, including legal costs or expenses incurred by the City as a result of any breach or alleged breach of a term, warranty, representation or covenant in this Agreement by the Service Provider;
 - (d) agrees that the indemnities herein set forth shall survive in perpetuity; and
 - (e) agrees not to institute any action against the City on the grounds that the use of the work or product constitutes an infringement of its moral rights.

15. Time

- 15.1 The Service Provider shall perform the Services expeditiously to meet the requirements of the City and shall complete any portion or portions of the Services in such order as the City may require.

16. Waiver

- 16.1 The failure of either party at any time to require performance by the other party of any provisions shall in no way affect the full right to require such performance at any time thereafter, nor shall waiver by either party of any breach of the provisions be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.

17. Notice

- 17.1 Any notice, report, direction, request or other documentation required or permitted to be given to either party hereto shall be in writing and shall be given by personal service or by mailing by registered mail, with postage thereon fully prepaid, in a sealed envelope, to be addressed as follows:

If for the Service Provider:
To: <insert Service Provider's name>
Address: <insert Service Provider's address>

If for the City:
To: The Corporation of the City of
London
Attn: Executive Director
Community Services
Address: Market Tower,
151 Dundas Street, P.O. Box 5045
London, ON N6A 4L6

Either party may by notice in writing advise of a new address for notice, which shall then be used by the party to whom it is addressed.

Any notice, report, direction, request or other document delivered personally in accordance herewith shall be deemed to have been received when given to the addressee on the day of delivery. Any notice, report, direction, request or other document mailed as aforesaid shall be deemed to have been received by and given to the addressee on the second (2nd) business day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a business day.

18. Conflict of Interest

18.1 The Service Provider shall disclose in writing to the Executive Director any outside interest and commitments that may generate a conflict of interest before commencing work under this Agreement and thereafter upon any such outside interest or commitment coming to the Service Provider's attention. "Conflict of Interest" means a situation in which the interests of the Service Provider or the Service Provider's staff or any outside interest or commitment of the Service Provider comes into conflict, or appears to come into conflict, with the interests of the City. The Executive Director shall review the conflict promptly after disclosure by the Service Provider and shall give the Service Provider notice under **Clause 17.1** of his determination in writing as to whether any outside interest or commitment raises a potential conflict of interest with respect to the projects identified in **Schedule "1"**, and the decision of the Executive Director shall be final. Disclosures of conflicts by the Service Provider to the Executive Director shall be kept confidential except to the extent necessary to review, consider and resolve any conflict and as permitted by the *Municipal Freedom of Information and Protection of Privacy Act*. A conflict of interest may be resolved by the Service Provider ceasing to carry out a portion of the work identified in **Schedule "1"** upon the written direction of the Executive Director or by the termination of the contract in accordance with **Clause 6.1**.

19. Applicable Law

19.1 This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and Canada and the parties hereto hereby agree to the jurisdiction of the Courts of Ontario.

19.2 This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.

IN WITNESS WHEREOF the parties have caused to be executed, this Agreement;

SIGNED SEALED AND DELIVERED;

The Corporation of the City of London

Date

Per: <insert Executive Director's Name>
Executive Director - Community Services

<INSERT NAME OF SERVICE PROVIDER>

Date

Per:
Signature

Print Name, Title
I have authority to bind the Corporation

Date

Witness Signature
(required where Service Provider is not a Corporation)

Schedule “1”

<Insert Description of Services>

<Insert Methodology and timeline to complete project>

<Insert demonstrated experience and qualifications required to perform project>

<Insert list of personnel who will be directly involved in the completion of project>

SCHEDULE "2" – SERVICE PROVIDER'S FEES

Payment Details:

Budget Limit: \$