

Bill No. 277  
2012

By-law No. A.-

A by-law to authorize and approve a Purchase of Service Agreement between The Corporation of the City of London and Investing in Children Inc.; and to authorize the Director, Neighbourhood & Children's Services 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;

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 WEHREAS sections 9 and 10 and 23.1 through 23.5 of the *Municipal Act, 2001* authorize a municipality to delegate its powers and duties under this or any other Act to a person or body;

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

1. The Purchase of Service Agreement to be entered into between The Corporation of the City of London and Investing in Children Inc., attached as Appendix A to this by-law, respecting project management and development services for the Child and Youth Agenda, is hereby authorized and approved.
2. The Director, Neighbourhood & Children's Services is authorized to execute the agreement authorized and approved under section 1 of this by-law.
3. The Director, Neighbourhood & Children's Services is delegated the authority to authorize and approve such further and other documents, including agreements, that may be required in furtherance of the Purchase of Service Agreement authorized and approved under section 1 of this by-law and that are consistent with the requirements contained in the Agreement and that do not require additional funding or are provided for in the City's current budget, and that do not increase the indebtedness of The Corporation of the City of London.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 26, 2012.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First Reading - June 26, 2012  
Second Reading – June 26, 2012  
Third Reading – June 26, 2012

## APPENDIX A

### PURCHASE OF SERVICE AGREEMENT PROJECT MANAGEMENT AND DEVELOPMENT SERVICES FOR THE CHILD AND YOUTH NETWORK

**THIS AGREEMENT**, dated the 8<sup>th</sup> day of June 2012, with effect as of the 27<sup>th</sup> day of June 2012,  
BETWEEN:

**INVESTING IN CHILDREN INC.**

(herein after referred to as the "Service Provider")

AND

**THE CORPORATION OF THE CITY OF LONDON**

(herein after referred to as the "City")

WHEREAS THE City has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority, pursuant to Section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended;

AND WHEREAS the City wishes to purchase the services of an organization to provide project management, project development and project coordination services in the form of three (3) full time equivalent Child and Youth Network Project Managers and one (1) full time equivalent Child and Youth Network Project Coordinator;

AND WHEREAS the Child and Youth Agenda was endorsed by Municipal Council for the City at its meeting of November 17, 2008;

AND WHEREAS the Service Provider has agreed to provide these services pursuant to the terms and conditions set out herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants contained in the Agreement, the parties agree as follows:

**1.0 TERM:**

1.1 Term of Agreement

This Agreement shall commence June 27, 2012 and end June 26, 2013 unless terminated earlier by the City or Service Provider pursuant to the termination provisions in this Agreement.

1.2 Renewal

This Agreement shall automatically renew for a further one year term, up to a maximum of two one-year renewals of the term, subject to the termination provisions in this Agreement.

1.3 Termination

The City may, for any reason, without liability, cost or penalty, terminate this Agreement by providing 30 days' prior written notice to the Service Provider. Upon the City providing such written notice, the Service Provider shall perform no further Services nor incur any disbursements other than those reasonably necessary to close out its Services. The Service Provider may, for any reason, without liability, cost or penalty, terminate this Agreement with 90 days' prior written notice to the City.

**2.0 CONSIDERATION:**

2.1 The City shall pay the Service Provider up to a maximum of \$350,000 for the term of this Agreement, with the funds released on a quarterly basis in four equal payments. The amount of Consideration may be increased cumulatively by 2% per renewal period up to the maximum of \$350,000 for the term in the sole discretion of the Director, Neighbourhood & Children's Services (the "Director").

2.2 In the event of termination, the City shall only be obligated to pay the Service Provider for those Services completed and disbursements incurred up to the date of termination, and the Service Provider shall accept such payment in full satisfaction for all Services performed.

### **3.0 OBLIGATIONS OF THE SERVICE PROVIDER:**

#### **3.1 Services to be Provided:**

The Service Provider shall contract project management and coordination services for the implementation of strategies developed by the Implementation/Working groups of the Child and Youth Network (the "Services"). The Service Provider has advised the City that the Service Provider intends to hire four (4) full-time equivalent positions for such Services.

3.2 The Service Provider understands that its focus shall be on the implementation of the three year strategies laid out in *The Best for Our Children, Youth and Families: The Next Three Years of London's Child and Youth Agenda to 2015*, of which the Service Provider acknowledges it has a copy.

3.3 The Service Provider shall ensure that the Services are provided in a competent and professional manner and the Service Provider shall comply with all reasonable directions and requests of the City.

3.4 The Service Provider shall ensure that there is compliance with all reasonable directions of the co-chairs of the Child and Youth Network Implementation Teams for: Literacy; Healthy Eating and Healthy Physical Activity; Family Centred Service System; and Ending Poverty.

### **4.0 OBLIGATIONS OF THE CITY:**

#### **4.1 Office Space to be Provided**

The City shall provide the Service Provider use of office space at 151 Dundas Street for the four (4) full-time equivalent positions for the duration of their employment contract with the Service Provider or the duration of the Agreement, whichever ends first.

4.2 The City agrees to supply, at its sole cost and expense, all equipment, materials and supplies reasonably necessary to perform the services to be provided by the Service Provider under this Agreement.

4.3 The City will provide orientation to 151 Dundas Street, including evacuation and emergency procedures.

4.4 The City will provide Health & Safety Training as well as other relevant training on City of London policies and procedures that are consistent with legislative requirements under the *Occupational Health and Safety Act*. The City may also choose to provide supplemental training at its discretion.

4.5 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.

### **5.0 RECORDS AND REPORTS**

#### **5.1 Records**

The Service Provider shall maintain and retain records and accounts pertaining to the services of the project management and coordination services.

The City shall have access, at all reasonable times and upon giving reasonable notice in writing, to such records and accounts for the purposes of auditing or copying same.

#### **5.2 Reports**

The Service Provider shall ensure that the Service Provider's project managers provide verbal and written activity reports to the City as required by the City and the Co-Chairs of the Child and Youth Network Implementation Teams.

### **6.0 CONFIDENTIALITY**

6.1 In accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, the Service Provider shall hold confidential and shall not disclose or release to any person at any time during or following the term of this Agreement, except where required by law, any information or document without obtaining the written consent of the City and shall comply with the requirements regarding Personal Information and Confidentiality as

contained in applicable legislation including 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.

- 6.2 The Service Provider shall provide a draft copy of any report to the Director for approval and shall not distribute the report to any other person without first obtaining the prior written approval of the Director.
- 6.3 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.

## **7.0 INDEPENDENT CONTRACTOR**

The Service Provider acknowledges and agrees that this Agreement shall in no way be deemed or construed to be an Agreement of Employment. Specifically, the parties agree that it is not intended by this Agreement that the Service Provider nor any person employed by or associated with the Service Provider is an employee of, or has employment benefits of any kind with the City or is in any way entitled to employment benefits of any kind whatsoever from the City whether under internal policies and programs of the City, the *Income Tax Act*, the *Canada Pension Act*, the *Employment Insurance Act*, the *Workplace Safety and Insurance Act*, the *Occupational Health and Safety Act*, the *Pay Equity Act*, the *Health Insurance Act*, or any other employment-related legislation, all as may be amended from time to time, or otherwise.

The Service Provider is acting as an independent contractor in the performance of this Agreement and shall not be deemed to be the employee, agent, partner of, or in joint venture with the City, and the Service Provider's officers, directors, employees and agents shall not be deemed to be the employees, agents, partners of, or in joint venture with the City.

## **8.0 INSURANCE AND INDEMNITY**

- 8.1 Throughout the term of this Agreement, the Service Provider shall maintain comprehensive general liability insurance on an occurrence basis for an amount of not less than Two Million Dollars (\$2,000,000) and shall include the City as an additional insured with respect to the Service Provider's operations, acts and omissions relating to its obligations under this Agreement, such policy to include non-owned automobile liability, personal liability, personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses. The Service Provider shall submit a completed standard Insurance Certificate (Form #0788), and shall provide the City with a minimum of thirty days' notice in advance of cancellation of such insurance.
- 8.2 The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this Agreement as it may reasonably require.
- 8.3 Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.
- 8.4 The Service Provider undertakes and agrees to defend and indemnify the City and hold the City harmless, at the Service Provider's sole expense, from and against all claims, demands, suits, losses, costs, damages and expenses that the City may sustain or incur by reason of:
  - 8.4.1 any breach of this Agreement by any of the Service Provider, the Service Provider's employees or persons for whom the Service Provider is at law responsible;
  - 8.4.2 any loss or misuse of funds held by the Service Provider as described in this Agreement;
  - 8.4.3 the acts or omissions of the Service Provider, the Service Provider's employees or any person for whom the Service Provider is at law responsible in performing Services or otherwise carrying on the Service Provider's business, including any damage to any and all persons or

property, whether deliberate, accidental or through negligence, and all tickets, fines or penalties;

8.4.4 any claim or finding that any of the Service Provider, the Service Provider's employees or persons for whom the Service Provider is at law responsible are employees of, or are in any employment relationship with, the City or are entitled to any Employment Benefits of any kind; or

8.4.5 any liability on the part of the City, under the Income Tax Act (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, by virtue of any of the following being considered to be an employee of the City, from the Service Provider, the Service Provider's employees or others for whom the Service Provider is at law responsible in connection with the performance of Services or otherwise in connection with the Service Provider's business.

## **9.0 INTELLECTUAL PROPERTY**

9.1 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.

9.2 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.

9.3 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.

## **10.0 NOTICE**

10.1 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: Investing In Children Inc.  
205 Oxford St. E, Suite 206  
London, ON, N6A 5G6}

If for the City:  
To: The Corporation of the City of London  
Attn: Manager, Children's Services  
Market Tower,  
151 Dundas Street, P.O. Box 5045

London, ON N6A 416

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.

**11.0 GENERAL**

11.1 The Service Provider agrees that during the term of this Agreement it will provide its Services on a non-exclusive basis.

11.2 It is acknowledged by the City that this is not an exclusive Agreement with the Service Provider and that the Service Provider provides or may provide similar services to other companies.

11.3 Governing Law

This Agreement shall be governed and interpreted in accordance with the laws of Ontario and Canada applicable to this agreement, and shall be treated in all respects as an Ontario contract. The Service Provider and the City specifically submit to the exclusive jurisdiction of the courts of Ontario and Canada.

11.4 Survival

The provisions relating to liability, indemnity and confidentiality requirements shall survive termination or expiry of this Agreement for a period of seven (7) years from the date of the termination of this Agreement.

11.5 Execution

The Service Provider acknowledges that it has read this Agreement, understands and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF** the parties have caused to be executed, this Agreement;  
**SIGNED, SEALED AND DELIVERED**

**THE CORPORATION OF THE CITY OF LONDON**

\_\_\_\_\_  
Lynne Livingstone  
Director, Neighbourhood & Children's Services

**INVESTING IN CHILDREN INC.**

\_\_\_\_\_  
Per: Name:  
Title:

\_\_\_\_\_  
Per: Name:  
Title:

I /We have authority to bind the corporation.