

GENERAL PROVISIONS

G-1.0 INTERPRETATION:

G-1.1 In this Agreement,

- a) “Executive Director” means the Executive Director of Housing and Children’s Services for the Corporation or a Designate;
- b) “Agreement” means this Agreement and the attached Schedule(s) which embody the entire Agreement between the parties;
- c) “Service Provider” means Service Provider set forth in paragraph B-1(b) of this Agreement.
- d) “Corporation” means The Corporation of the City of Windsor acting as a body corporate;

G-1.2 All of the provisions of this Agreement are to be construed as covenants even where not expressed as such. If any such provision is held to be or rendered invalid, unenforceable, or illegal, then it shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in force.

G-1.3 Wherever a word importing the singular number only is used in this Agreement, such word shall include the plural. Words importing either gender or firms or corporations shall include the other gender and individuals, firms or corporation where the context so requires.

G-1.4 This Agreement shall be governed by, interpreted and enforced in accordance with the laws in force in the Province of Ontario.

G-1.5 This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and both of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

G-1.6 This Agreement constitutes the entire agreement between the Parties concerning the premises and may only be amended or supplemented by an agreement in writing signed by both parties.

G-2.0 ADMINISTRATION OF THIS AGREEMENT

G-2.1 The Service Provider shall deal at all times with the Executive Director or a Designate, and any information, instructions, directions, or assistance required by the Service Provider shall be obtained through the Executive Director or Designate.

G-2.2 Where any approval is required, or any decision must be made under the provisions of this Agreement by the Corporation, such approval or decision will be made by the Executive Director or Designate.

G-3.0 **SERVICE(S)**

G-3.1 The Service Provider agrees to provide services in accordance with the attached Service Description Schedules, Budget Schedule(s), and/or Service Data Schedule(s), and in accordance with the policies, guidelines, and requirements of the Corporation as communicated to it.

G-3.2 The Service Provider acknowledges that it has been fully advised of and is completely familiar with the nature and purpose of the services to be provided under this Agreement.

G-3.3 The Service Provider represents and warrants that the Service Provider has the expertise, experience, and knowledge required to provide the Services pursuant to this Agreement and that the Corporation is relying upon such representation and warranty in entering into this Agreement.

G-4.0 **PAYMENT**

G-4.1 The Parties to this Agreement hereby acknowledge and agree that the Corporation is purchasing the Services under this Agreement pursuant to funding from the Corporation, provincial government, federal government or a combination thereof as the case may be. If at any time this funding is altered, rescinded or terminated, the Corporation reserves the right to terminate this Agreement. The Parties further acknowledge and agree that the purchase of Services under this Agreement in no way obligates the Corporation to continue to purchase the Services or similar services from the Service Provider after the end of the Term or the termination of this Agreement.

G-4.2 Subject to the provisions of section 4.1 herein, the Corporation shall pay to the Service Provider, for approved expenditures incurred pursuant to this Agreement, an amount not to exceed the amount stipulated in the Budget Schedule. The Corporation reserves the right to determine the amounts, times, and manner of such payments.

G-4.3 The Service Provider agrees that any errors or omissions with respect to payments made under the Agreement must be reconciled within ninety (90) days of receipt of the payment by the Service Provider.

G-4.4 The Parties agree that the approved budget will be negotiated on or before the

start of the applicable fiscal year while this Agreement is in force. In the event of the budget not being re-negotiated by that time, payments will continue to be made in accordance with the approved budget for the immediately preceding fiscal year until such time as the budget is re-negotiated or this Agreement is terminated.

G-4.5 It is agreed and understood that the Corporation may withhold payment if the Service Provider is in breach of its obligations under this Agreement.

G-4.6 The Corporation reserves among all other rights and remedies available to it at law or equity, the right to recover payment in part or in full should the Service Provider breach its obligations under this Agreement.

G-4.7 It is further agreed and understood that in the event targets are not achieved to the level indicated in the Service Data Schedule, or the Service Provider does not spend monies advanced by the Corporation for the approved services, the Corporation may in the Corporation's sole discretion, require the Service Provider to refund such amounts as may be determined by the Corporation. The Service Provider agrees to return such unspent monies to the Corporation.

G-5.0 **TERM OF AGREEMENT AND TERMINATION OF AGREEMENT**

G-5.1 This Agreement shall be in force for the Term set out in paragraph B-1(e) of this Agreement, or until it is superseded or replaced by a subsequent Agreement.

G.5.2 The Corporation may terminate this Agreement by giving sixty (60) days written notice to the Service Provider. Upon such notice being given this Agreement shall terminate and be of no further force and effect on the expiration of the said sixty (60) days.

G.5.3 In the event that the Service Provider terminates this Agreement, either before the end of the Term, or at the end of the Term, the Service Provider shall give the Corporation sixty (60) days prior written notice. Upon such notice being given this Agreement shall terminate and be of no further force and effect on the expiration of the said sixty (60) days.

G-5.4 That if in the opinion of the Corporation the Service Provider fails to comply with any of the terms of this Agreement, and the Corporation gives to the Service Provider written notice of the non-compliance, and the Service Provider fails to remedy the breach within twenty (20) days of the written notice being given, then the Corporation may forthwith terminate this Agreement without any further notice to the Service Provider upon the expiry of the said twenty (20) days.

G.5.5 In the event that the Service Provider becomes bankrupt or insolvent, goes into receivership, takes the benefit of any statute relating to bankrupt or insolvent debtors, ceases

operations, or in the case of a corporation ceases to be a corporation in good standing under the applicable laws of Ontario or Canada, then this agreement shall terminate upon the date of the happening of such an event.

G-5.6 In case of any dispute under this Agreement, the decision of the Executive Director shall be final and binding upon both Parties.

G-5.7 If the Agreement is terminated in part with respect to the provision of a specific service as outlined in the Service Schedules of the Agreement, all obligations with respect to the provision of all other services continue in full force and effect.

G-5.8 In the event of termination, the Service Provider shall refund to the Corporation any money advanced by the Corporation and not expended in accordance with the approved budget.

G-5.9 It is a condition of this Agreement and every agreement entered into in pursuance of the performance of this Agreement that no right under the Human Rights Code, or other applicable Human Rights Policy will be infringed. Breach of this condition is sufficient grounds for the termination of this Agreement.

G-5.10 Any termination of this Agreement shall be without prejudice to any other rights or remedies the Corporation may have at law or equity, and the Service Provider acknowledges that upon termination, the Corporation may re-procure services the same or similar to the services provided pursuant to this Agreement.

G-5.11 In the case of termination or expiry of this agreement, the provisions of the following sections continue to apply: G-4.3, G-4.5, G-4.6, G-4.7, G-5.8, G-7.1, G-7.2, G-7.3, G-8.1, G-8.2, G-8.3, G-8.4, G-8.5, G-8.6, G-12.1, G-17.1, G-18.1 and G-21.1.

G-6.0 **ACCESS AND CONSULTATION**

G-6.1 The Service Provider will permit the Corporation's staff to enter at reasonable times any premises used by the Service Provider in connection with the provision of services pursuant to this Agreement and under its control in order to observe and evaluate the services and inspect all records relating to the services provided pursuant to this Agreement.

G-6.2 The Service Provider agrees that the staff providing services pursuant to this Agreement will upon reasonable request, be available for consultation with the Corporation's staff.

G-7.0 **SERVICE RECORDS AND REPORTS**

G-7.1 The Service Provider shall maintain full and complete service records respecting each site where service is being provided and prepare and submit at such intervals

as indicated in the Service Data Schedule, a report respecting the services being provided pursuant to this Agreement, acceptable to the Corporation's staff which shall include program data such as statistics on target achievements and other such information as the Corporation requires.

G-7.2 For each and every quarter or at other times as the Corporation may reasonably request, the Service Provider will prepare and submit service reports respecting the services provided pursuant to this Agreement. The service reports shall comply with the Corporation's requirements as to form and content.

G-7.3 In the event the Service Provider ceases operation or is succeeded by a successor Service Provider, it is agreed that the Service Provider will not dispose of any records related to the services provided for under this Agreement without the prior consent of the Corporation, which consent may be unreasonably withheld or given subject to such conditions as the Corporation may impose.

G-8.0 **FINANCIAL RECORDS AND REPORTS**

G-8.1 The Service Provider shall maintain financial records and books of account respecting services provided pursuant to this Agreement for each site where service is being provided and will allow Corporation's staff or such other persons appointed by the Corporation to inspect and audit such books and records at all reasonable times both during the term of this Agreement and subsequent to its expiration or termination.

G-8.2 The Service Provider shall, unless the Corporation indicates otherwise, submit to the Corporation in a form acceptable to the Corporation an audited financial statement with respect to the services provided pursuant to this Agreement within three (3) months of the Service Provider's financial year-end.

G-8.3 The Service Provider shall retain and preserve all the Service Provider's records related to this Agreement for a period of seven (7) years after each such record has been received or created, as the case may be. The Service Provider shall not dispose of any records related to this Agreement before the expiration of any such period without the prior written consent of the Corporation, which consent may or may not be given in the Corporation's sole discretion, subject to such conditions as the Corporation deems advisable. For greater certainty, the obligations of the Service Provider under this Section 8.3 shall survive the termination or expiration of this Agreement.

G-8.4 The Service Provider shall prepare and submit to the Corporation for each quarter or at any other time upon reasonable request, a financial report containing such

information as the Corporation may require, in a form acceptable to the Corporation.

G-8.5 The Service Provider shall adhere to any additional financial reporting requirements specified by the Corporation. In the event that such financial reports are not submitted as required, then the Corporation will withhold payment to the Service Provider until the financial reports are submitted.

G-8.6 The Service Provider shall comply with Generally Accepted Accounting Principles (GAAP) in the treatment of revenues and expenditures.

G-9.0 **CONFIDENTIALITY**

G-9.1 The Service Provider, its directors, officers, employees, agents, and volunteers shall hold confidential and not disclose or release other than to the Corporation or its delegate at any time during or following the term of this Agreement, except, where required by law, any information or document that identifies any individual in receipt of services without first obtaining the written consent of the individual or the individual's parent or guardian prior to the release or disclosure of such information or document.

G-9.2 The Service Provider acknowledges that any information collected by the Corporation pursuant to this Agreement is subject to the *Municipal Freedom of Information and Protection of Privacy Act*.

G-10.0 **COMMUNICATIONS PROTOCOL REQUIREMENTS**

G-10.1 The Service Provider shall notify the Corporation prior to communications of any kind related to funding under this Agreement.

G-10.2 The Service Provider shall provide notification to the Corporation regarding publicity relating to projects funded in accordance with this Agreement, including but not limited to advertising, signs, messages, web-communications, public statements, press conferences, news releases, announcements, official ceremonies or special events. With respect to all such publicity, the Service Provider is responsible for:

- a. Publically recognizing the Corporation's role in providing funding; and
- b. Inviting the Corporation's Commissioner of Community Development and Health Services to attend any events related to their investment announcement

With respect to all such publicity, the Corporation is responsible for:

- a. Publically recognizing the appropriate provincial or federal Ministry's (the "Ministry") role in providing funding; and

- b. Inviting the appropriate provincial or federal Minister (the “Minister”) to attend any events related to their investment announcement; and
- c. Inviting the Mayor and Council, as appropriate.

G-10.3 For all events, including press conferences, announcements and official ceremonies, relating to projects funded in accordance with this Agreement, the Service Provider must notify the Corporation at least 20 working days prior to the planned date of the event. No arrangements shall be made for events until the Corporation approves the event. The Corporation or its designated representatives and Minister may participate in any such press conference or event.

G-10.4 The Corporation and/or Ministry must approve any news release related to funding ahead of time. News releases may include quotations from a Corporation official, Minister, or other contributors and the applicant. The Corporation must agree on these quotations, and on the timing of the news release.

G-10.5 During construction, of any project funded under this Agreement, the Service Provider shall provide and install temporary signage at a prominent location where there is visible activity related to the approved project. The signage shall recognize the Corporation and/or Ministry as a funder and shall bear messages and/or logos approved by the Corporation and Ministry, and remain in place through the construction period of the project.

G-10.6 At any permanent location funded under this Agreement, the Service Provider shall provide and install a plaque or permanent sign that recognizes the Corporation and/or Ministry as a funder and shall bear messages and/or logos approved by the Corporation and Minister, if applicable.

G-11.0 **CONFLICT OF INTEREST**

G-11.1 The Service Provider, any of its sub-contractors and any of their respective advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services to the Corporation where such activity or the provision of such services, creates a conflict of interest (actually or potentially in the sole opinion of the Corporation) with the provision of services pursuant to the Agreement. The Service Provider acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Corporation relevant to the services where the Corporation has not specifically authorized such use.

G-12.0 **INDEMNIFICATION AND INSURANCE**

G-12.1 The Service Provider shall both during and following the term of this Agreement, indemnify and save harmless the Corporation, its employees, officers, agents, Council members, from and against any and all costs, losses, injuries, damages, judgments, claims, expenses, demands, suits, actions, complaints or any other proceedings, fines, or recoveries whatsoever in any manner based upon, occasioned by or attributable to anything done or omitted to be done by the Service Provider, its directors, officers, employees, agents or volunteers or anyone for whom the Service Provider is responsible at law, for or in connection with services provided, purported to be provided or required to be provided by the Service Provider pursuant to this Agreement.

G-12.2 During the term of this Agreement or any renewal thereof, the Service Provider shall obtain and maintain in full force and effect, general liability insurance coverage issued by an insurance company authorized by law to carry on business in the Province of Ontario. The policy must include abuse liability coverage unless waived by the Corporation. Such policy shall be issued in the name of the Service Provider, shall have inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000.00) for bodily injury and property damage resulting from any one occurrence in respect of and during the provision of services by the Service Provider pursuant to this Agreement, shall contain a clause including liability arising out of this Agreement, shall contain a cross liability clause with the Corporation as an additional insured, and be in a form satisfactory to the Corporation. Failure of the Corporation to demand full compliance with the insurance requirements set out above or failure of the Corporation to identify a deficiency from the evidence of insurance provided will not be construed as a waiver of the Service Provider's obligation to maintain such insurance.

G-12.3 The Service Provider shall also obtain and maintain insurance against liability for bodily injury and property damage caused by vehicles owned by the Service Provider and used in connection with the day to day operation of the contracted services or vehicles not owned by the Service Provider, but used in connection with the day to day operation of the contracted services, including a passenger hazard in the amount of TWO MILLION DOLLARS (\$2,000,000.00).

G-12.4 All such insurance policies required of the Service Provider shall contain a provision requiring the insurers to notify the Corporation not less than 30 days prior to any material change, cancellation, or termination.

G-12.5 The Agreement shall forthwith terminate in the event that any insurance policy required by sections 12.2 and 12.3 is terminated or amended without written consent of the Corporation.

G-12.6 The Service Provider shall, immediately upon the execution of this Agreement

and annually within 30 days of the renewable date of the policy, provide to the Corporation either copies of the liability and vehicle insurance policies as required by this Agreement or certificates of the said insurance policies.

G-13.0 **OBSERVANCE OF LAW**

G-13.1 The Service Provider shall provide all services required under this Agreement in compliance with all applicable statutes, laws, by-laws, regulations and orders in force during the term of this Agreement. Notwithstanding the generality of the foregoing, the Service Provider shall comply with:

- a) the Act and Regulations including the requirement that it holds a valid, clear license, where applicable;
- b) all zoning, police, building safety, fire safety and sanitary requirements, regulations and by-laws, laws and lawful orders imposed by any Municipal, Provincial, or Federal authority relating to the premises, and will observe and obey any other requirements governing the operation of the contracted services.

G-13.2 Where applicable, at the time of execution of this Agreement, the Service Provider must submit a copy of its current license to operate the service and therefore, must file annually with the Executive Director or Designate, a copy of the license renewal.

G-14.0 **NON-ASSIGNMENT**

G-14.1 The Service Provider will not assign this Agreement, or any part thereof, without the prior written approval of the Corporation, which approval may be withheld by the Corporation in its sole discretion or given subject to such conditions as the Corporation may require.

G-15.0 **AMENDMENT**

G-15.1 This Agreement may be amended from time to time by the addition or substitution of Schedule(s), duly signed by the Parties to this Agreement.

G-16.0 **SCHEDULES**

G-16.1 This Agreement and Schedules(s) attached hereto, embody the entire Agreement between the Parties and supersedes any other understanding or agreement, collateral, oral or otherwise, existing between the Parties at the date of execution and relating to the subject matter of this Agreement.

G-17.0 **NOTICES**

G-17.1 Any notice, demand, acceptance, or request to be given under the provisions of this Agreement by either Party to the other herein shall be in writing and shall be deemed to have been received by the other Party on the day it was delivered in person or, if mailed, on the 5th day next following the day on which it was mailed or, if sent by facsimile, deemed received on the date transmitted if transmitted during normal business hours. The facsimile will be deemed received on the next business day where it is transmitted outside of normal business hours. If transmitted by facsimile machine, confirmation of successful transmission must be obtained.

G-17.2 Any Notice given under this Agreement shall be addressed, in the case of the Service Provider to the address as set forth in paragraph B-1.(b) of this Agreement, and in the case of the Corporation to the Community Development and Health Services Department to the address set forth in paragraph B-1.(a) of this Agreement, or to such other address as either Party may from time to time designate by written notice to the other Party.

G-18.0 **DISPOSITION**

G-18.1 The Service Provider will not sell, change the use, or otherwise dispose of any item, furnishings or equipment purchased with Corporation funds pursuant to this Agreement without the prior written consent of the Corporation, which may be given subject to such conditions as the Corporation deems advisable.

G-19.0 **STATUS OF SERVICE PROVIDER**

G-19.1 The Service Provider acknowledges and agrees this Agreement is in no way 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, or its employees, be employees of the Corporation for the purpose of the *Income Tax Act*, R.S.C. 1985 c. 1 (1st Supp); the *Canada Pension Plan Act*, R.S.C. 1985, c. C-8; the *Employment Insurance Act* S.O. 1996, c. 23; the *Workplace Safety and Insurance Act*, 1997 S.O. 1997, c.26 (Schedule "A"); the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1; the *Pay Equity Act*, R.S.O. 1990, c. P.7; or the *Health Insurance Act*, R.S.O. 1990, c. H. 6; all as amended from time to time, and any legislation in substitution therefore.

G-19.2 Notwithstanding the provisions of section 19.1 herein, it is the sole and exclusive responsibility of the Service Provider to make its own determination as to its status under the Acts referred to above and, in particular, to comply with the provisions of any of the aforesaid Acts and to make any payments required there under.

G-19.3 The Service Provider shall indemnify and hold harmless the Corporation from any and all amounts required to be paid by the Service Provider, or claimed to be due and owing and for any and all legal costs, including fees and disbursements and for any administrative costs, incurred by the Corporation, relating to any failure of the Service Provider to comply with all provisions of the Acts described above.

G-19.4 The Parties hereto expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of the Corporation or the Service Provider shall constitute or be deemed to constitute the Corporation and the Service Provider as partners, joint venturers, or principal and agent in any way or for any purpose. It is expressly understood that the Parties are independent contractors and no partnership of any kind is inferred between the parties. The Service Provider shall not represent or hold itself out to be an agent of the Corporation. No Party hereto shall have any authority to act for or to assume any obligation or responsibility on behalf of the other Party hereto.

G-20.0 **WAIVER**

G-20.1 Except as specifically set out in this Agreement, no waiver of any clause, term, or condition of this Agreement by an employee, agent or contractor of the Corporation shall constitute an enforceable or continuing waiver by the Corporation, nor shall the Service Provider be entitled to rely thereon.

G-21.0 **RIGHTS AND REMEDIES**

G-21.1 Nothing contained in this Agreement shall be construed as restricting or preventing either Party from relying on any right or remedy otherwise available to it at law in the event of any breach of this Agreement.

G-22.0 **BINDING EFFECT**

G-22.1 This Agreement and everything herein contained shall inure to the benefit of and be binding upon the Parties, hereto, and their respective successors, administrator, and permitted assigns.

G-23.0 **NON-EXCLUSIVITY**

G-23.1 Nothing in this Agreement shall be construed as to give the Service Provider any exclusive right or privilege in providing the Services to the Corporation. The Corporation shall, during or after the term of this Agreement, retain the right to perform or contract for the

same or similar services to be provided for its citizens in the same geographic area.

G-24.0 **MISCELLANEOUS**

G-24.1 The Service Provider and the Corporation shall, upon the reasonable request of the other, make, do, execute, or cause to be executed, all such further and other lawful acts, deeds, things, documents and assurances whatsoever necessary to give effect to this Agreement.

G-24.2 No condoning, excusing or overlooking by the Corporation of any default, breach or non-observance by the Service Provider at any time or times in respect of any covenant, obligation or agreement under this Agreement shall operate as a waiver of the Corporation's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of the Corporation herein in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Corporation save only an express waiver in writing.

G-24.3 If any portion of this Agreement is, or becomes illegal, invalid, or unenforceable, then the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this agreement.