

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON WEDNESDAY FEBRUARY 18, 2015
FROM:	SANDRA DATARS BERE MANAGING DIRECTOR, HOUSING, SOCIAL SERVICES AND DEARNESS HOME
SUBJECT:	AGREEMENT TO APPROVE A MANAGEMENT CONTRACT (AAMC) REGARDING THE LONG TERM CARE AND ADULT DAY PROGRAM MANAGEMENT CONSULTING AND ADMINISTRATOR SERVICES CONTRACT FOR THE DEARNESS HOME

RECOMMENDATION

That, on the recommendation of the Managing Director, Housing, Social Services and Dearness Home, the following actions **BE TAKEN** with respect to the implementation of an Agreement to Approve a Management Agreement regarding the Management Consulting Services and Administrator Services Contract for the Dearness Home:

- 1) the attached proposed by-law (Schedule "A") **BE INTRODUCED** at the Municipal Council meeting of February 24, 2015:
 - a) to **APPROVE** the Agreement substantially in the form attached hereto as Appendix 1 between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Health and Long-Term Care, The Corporation of the City of London, and Extendicare (Canada) Inc.:
 - i. to grant provincial approval (by the Ministry Director) of the management consulting and administrator services contract between the City of London and Extendicare (Canada) Inc. under Section 110 of the Long Term Care Homes Act.
 - b) to **AUTHORIZE** the Mayor and the City Clerk to execute the agreement in 1(a) above; and
- 2) the Civic Administration **BE AUTHORIZED** to undertake all the administrative acts that are necessary in connection with the Agreements outlined in (1)(a) above;

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- December 02, 2013, Community and Protective Services Committee, Long Term Care and Adult Day Program Management, Consulting and Administrative Services Contract Amendment
- September 23, 2013, Community and Protective Services Committee, Dearness Home: Long Term Care and Adult Day Program Management Consulting and Administrator Services Contract
- April 23, 2013, Corporate Services Committee, Consultant and Administrator Services Single Source



BACKGROUND

The Corporation of the City of London is licensed under the *Long Term Care Homes Act, 2007*, to operate, maintain and manage the Dearness Home, a 243-bed long-term care facility. In October 2013, City Council approved an agreement between the Corporation (Licensee) and Extendicare (Canada) Inc. to provide management consulting and administrator services for a three year period beginning November 1, 2013 expiring October 31, 2016 (with 2 year extension possibility until October 2018). This agreement succeeded two short-term agreements with Extendicare, the latter of which expired on October 31, 2013.

Ministry of Health and Long Term Care (MOHLTC) Review and Approval – Agreement to Approve a Management Agreement (AAMC)

Subsection 110(1) of the *Long Term Care Homes Act, 2007* requires that the City (as Licensee) shall not allow anyone else to manage the home except as approved by the Ministry's Director. Prior to council approving the agreement with Extendicare in October, 2013, Civic Administration submitted a copy of the draft agreement to the Ministry for its review and approval. No communication was received from the Ministry of Health and Long Term Care prior to the termination of the temporary agreement (expiry date October 31, 2013), so Council approved the execution of the new longer term agreement, pending Ministry approval. This was done to ensure compliance with Ontario Regulation 79/10 made under the Long-Term Care Homes Act, 2007 Section 212 of the *Act* which requires a qualified Administrator to be working in the home a minimum of 35 hours per week. This is consistent with the administrator services provided under the agreement with Extendicare.

In late November 2013, the Ministry contacted the city, directed an amendment to the management consulting and administrator services agreement and advised that submission of the amended agreement for Ministry approval would be required. The amendment was completed and approved by Council and the final amended agreement submitted to the Ministry on November 27, 2013. In February 2014, the Ministry informed the city that as per Subsection 110 (1) of the LTCHA, 2007, Director Approval of the agreement would be completed through the execution of tripartite agreement between the Ministry, the City and Extendicare. An "Agreement to Approve the Management Agreement (AAMC)" was forwarded by the ministry to the city for execution. Upon execution of the AAMC, three agreements (the original and amended agreements between Extendicare and the City as well as the AAMC) will be in place.

Civic Administration including Legal Services and Risk Management staff have reviewed the Agreement (AAMC) and identified issues of concern. Negotiation with the Ministry regarding the Agreement occurred throughout 2014 and in late fall, a final draft Agreement was forwarded to the City for review, approval and execution. Despite some success in having the Ministry revise the draft agreement to reflect the City's concerns, there are still areas which create some challenge, as outlined below:

- **Intent of Agreement to Approve a Management Contract (AAMC) and Legislative Authority**

Section 110 (1) of the LTCHA advises that a management agreement to oversee the operation of a long term care home requires the "approval" of the Director (Ministry) but it does not prescribe through what format. There is no reference in the legislation or the accompanying regulations that a written agreement, in the form of the Agreement to Approve a Management Agreement (AAMC) as presented here, is a requirement. In response to the City's request about the legislative authority under which the province requires the execution of this agreement, the Ministry Director has advised that it is the Director's practice to issue such approvals only by way of a tripartite agreement which ensures that the parties have agreed to appropriate accountability measures. The Ministry has advised that failure to execute the agreement may result in the Licensee (the City) being found to be non-compliant with the legislation, which puts the Corporation and the services being provided at Dearness Home, at risk.



- **No release of the Licensee and Liabilities of the Licensee**

Paragraph 4 of the AAMC addresses the liabilities of the Licensee and includes the following requirements:

...and, for greater certainty, the Licensee shall be liable and responsible to the Minister, Director for all acts and omissions of the Manager, its agents, directors, officers and employees in respect of the Home as if the acts and omissions were the acts and omissions of the Licensee and its directors, officers, agents and employees, The Minister acknowledges that the Licensee has agreed not to amend the Service Accountability Agreement without the consent of the Manager.

The City requested that the Ministry remove this section of Paragraph 4 as it may create greater liability on the city than that which currently exists under the agreement with Extendicare and may create a contractual right to damages and specific performance, in favour of both the Province and Extendicare. It could potentially affect the City's ability to claim indemnification against Extendicare under the terms of the City's agreement with Extendicare, and/or it could affect the City's defence in regulatory proceedings. There may be acts/omissions of Extendicare (and its directors, officers, agents and employees) that the City should not be liable for (e.g. criminal acts). Further, the City as licensee is already liable to the Ministry under the LTCHA with respect to issuance of orders, written notifications, and written requests (which are issued to the licensee as per sections 135, 152, 153, 154, 155, 156, 157). As most of the obligations under the Act and Regulations are on the Licensee, the City argued that such "liability" to the Province does not have to be set out in a contract with the Province and Extendicare.

Despite the City's request, the Ministry did not remove this portion of paragraph 4 of the AAMC, but did amend the paragraph to add the following sentence:

"For greater certainty, and subject to the foregoing as set out in this section, nothing in this Agreement shall release the Manager from its indemnification and insurance obligations to the Licensee in the Management Contract".

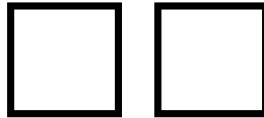
While the Ministry did not delete the section of the paragraph as the City requested, the Ministry did add additional information which it appears puts the onus on the Manager (Extendicare) to address any issues related to indemnification and insurance obligations.

The agreement also requires the City as Licensee to refrain from amending any Service Accountability Agreement (SAA) without the consent of the Manager. The SAA is typically a three-year contract and stipulates accountability and performance obligations for planning, integration and delivery of programs and services. At present, the City has two Service Accountability Agreements with the South West Local Health Integration Network, including the Long Term Care Homes Service Accountability Agreement (L-SAA) and the Multi-Sector Service Accountability Agreement (M-SAA) (for the Adult Day Program).

Although the City has discussed the parameters of both SAAs with Extendicare over the time that it has been providing services to the City, the City has not implemented formal approval processes to ensure Extendicare's agreement to any SAA change. Civic Administration is implementing a formal process moving forward although it is not expected that Extendicare will unreasonably withhold approval.

- **Default by the Licensee or the Manager under the Management Agreement**

The agreement between the City and Extendicare provides for termination by either party, with 120 days written notice. As necessary, the City may also terminate this Agreement or suspend or terminate the services or any portion thereof immediately, in the event that:



- (a) the LHIN terminates or reduces funding under the Long-Term Care Service Accountability Agreement, or
- (b) the LHIN terminates or reduces funding under the Multi-Sector Service Accountability Agreement, or
- (c) if so directed by the MOHLTC, or
- (d) at the direction of Municipal Council, or
- (e) Extendicare breaches this Agreement.

Under Paragraph 11 of the AAMC, additional notification is required. The Licensee must give the Minister (MOHLTC) a copy of any notice of default or notice of termination that either party (the Licensee and Extendicare) gives to the other pursuant to the Management Agreement. This notice is required to be provided to the Ministry at the same time that either party gives notice of termination.

In the case of default, the Agreement (Paragraph 11) further clarifies that if either party is in default under the contract in circumstances that would entitle the other party to terminate, the party terminating must give the Ministry no less than 30-day notice of its intention to terminate the agreement. The City advised the province that this additional notice requirement was not consistent with the agreement between the City and Extendicare (which requires 120-day notice or no pre-notice as noted above). After consideration of the City's request to remove this clause, the Ministry revised the paragraph to reflect (as it does currently) that the Director may allow a shorter (less than 30 day) notice period.

FINANCIAL IMPACT

The estimated total annual maximum cost for the agreement with Extendicare for management consulting and administrator services is \$570,000 plus HST. This cost is reflected in the approved Dearness Home operating budget.

There are no additional financial commitments to be incurred by signing the Agreement to Approve a Management Agreement (AAMC). However, it is noted that additional liability requirements under this agreement may have a financial implication on the corporation should issues be raised.

SUMMARY

The Ministry of Health and Long Term Care has advised that the agreement between the City (as licensee) and Extendicare (Canada) Inc. for management consulting and administrator services at the Dearness Home must be formally approved under the *Long Term Care Homes Act*. The Director (MOHLTC) has indicated that approval will be granted through the specific execution of a tripartite agreement (AAMC) between the City, Extendicare and MOHLTC. Extendicare has reviewed the draft agreement and has indicated its willingness to sign the agreement. A copy of their signed version of the AAMC agreement is attached. Copies of both the original agreement and amended agreements between the City and Extendicare are also attached.

A review of the AAMC agreement has identified some challenges and risks with the City's execution of the agreement. Notwithstanding, Civic Administration has worked continuously over the last several months to amend, as best as possible, those issues in the proposed agreement that created concern. No further amendments will be supported by the Ministry. The City has the choice not to sign the agreement, but respectful of the risks and challenges with the agreement, should there be no execution of the agreement, the Licensee would likely be deemed to be non-compliant with the Act and action would be taken (including a written order, notice or other sanction). Civic Administration is recommending the execution of this document,



and will work to ensure that any challenges or risks will be addressed and mitigated as quickly and efficiently as possible.

RECOMMENDED BY:
SANDRA DATARS BERE MANAGING DIRECTOR, HOUSING, SOCIAL SERVICES AND DEARNESS HOME

- Cc: L. Marshall, Solicitor II
A. Zuidema, City Manager
J. Barber, Managing Director, Corporate Services and City Solicitor
M. Hayward, Managing Director, Corporate Services & City Treasurer, CFO
V. Major McAlea, Managing Director, Corporate Services & Chief Human Resources Officer
A.L. Barbon, Director, Financial & Business Services
J. Brown, Manager, Financial and Business Services
G. Loder, Extendicare (Canada) Inc.
A. Heinz, Administrator, Dearness Home
N. Lytle, Director, MOHLTC



Schedule "A" – By-Law

Schedule "A"

Schedule "A"

Bill No.
2015

By-law No.

A By-law to approve an "Agreement to Approve a Management Contract" between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Health and Long-Term Care, The Corporation of the City of London and Extencicare (Canada) Inc.; and to authorize the Mayor and City Clerk to execute the agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* 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 subsection 110(1) of the *Long-Term Care Homes Act, 2007* provides that a licensee of a long-term care home shall not allow anyone else to manage the home except pursuant to a written contract approved by the Director;

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

1. The Agreement to Approve a Management Contract to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Health and Long-Term Care, The Corporation of the City of London, and Extencicare (Canada) Inc. regarding the approval of a management contract for the Dearness Home, attached as Appendix 1 to this by-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading –