

Bill No. 87
2019

By-law No. A.-____-____

A by-law to approve the Agreement between
The Corporation of the City of London and CBI
Limited for the provision of Homemaking
Services

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS the City has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, or any other Act, pursuant to the provisions of section 9 of the *Municipal Act, 2001*;

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

1. The agreement to be entered into between The Corporation of the City of London and CBI Limited regarding the provision of Homemaking Services, substantially in the form attached as Schedule 1 to this By-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved in paragraph 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on March 5, 2019

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading – March 5, 2019
Second reading – March 5, 2019
Third reading – March 5, 2019

SCHEDULE 1

PURCHASE OF SERVICE AGREEMENT

with effect as of March 5, 2019

BETWEEN:

CBI Limited ("the Service Provider")

-AND-

The Corporation of the City of London ("the City")

WHEREAS the City requires a Homemaking Services provider to provide basic housekeeping supports in accordance with the provisions of the *Homemakers and Nurses Services Act*, R.S.O.1990, c.H.10, and its regulations to qualifying residents who reside within the geographic area of the City of London;

AND WHEREAS Section 5 of the Act authorizes the City to enter into an agreement with any person or organization for the furnishing of any services that may be provided under the Act for such persons as may be agreed upon;

AND WHEREAS the Service Provider agrees to provide Homemaking Services in accordance with the terms of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants, the parties covenant and agree, each with the other, as follows:

1.0 Definitions

1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" shall mean this agreement and all schedules attached hereto, all written amendments to this agreement signed by each of the parties, and all other documents that are expressly incorporated by reference into this agreement;

"Act" means *Homemakers and Nurses Services Act*, R.S.O. 1990, c. H.10, or any successor legislation;

"Homemaking Services" means housekeeping services including,

- (a) light cleaning,
- (b) light laundry

provided in accordance with section 6 of the Act by a homemaker qualified under the Regulation to the Act;

"Term" has the meaning set out in clause 3.0.

"Vulnerable Person" means an individual who has difficulty protecting themselves from harm, and/or may be reliant on others because of age, mental disability, physical disability, or circumstances, and includes but is not limited to minors.

2.0 Services

Service Provider shall provide the Homemaking Services for the City on a fee for service basis in accordance with:

- (i) the term and conditions of this Agreement;
- (ii) all program requirement for Homemaking Services as outline in the Request for Proposal 18-48;
- (iii) all Applicable laws and by-laws of the City, Province of Ontario and the Government of Canada.

3.0 Term

The term of the Agreement shall commence March 5, 2019 and end March 4, 2022 unless terminated earlier by the City or Service Provider pursuant to the termination provisions in this Agreement.

The City at its absolute sole discretion has the option to renew the contract for 2 further 2-year periods.

4.0 Scope of Service

All program requirements for the Homemaking Services at the Dearness Home are outlined in the RFP document, and shall be deemed to form part of this Agreement.

The Service Provider shall be responsible for the hiring, training and supervision of all its employees and agents. The Service Provider shall employ due diligence in the screening and supervision of the staff and volunteers that will be working directly with Vulnerable Persons. The Service Provider shall obtain police clearance certificates for those individuals working with Vulnerable Persons and shall provide same to the City upon request.

The Service Provider shall employ only competent and orderly employees and agents, and shall ensure that employees and agents that provide Homemaking Services have the qualifications as required of a homemaker under the Act and in particular section 2 of Regulation 634:

- A homemaker shall be,
- (a) a person who is qualified by training or experience to perform homemaking services;
 - (b) medically examined annually and certified by a physician as being in good health and physically fit for the duties of a homemaker;
 - (c) sympathetic to the welfare of children and families and to those who are elderly, handicapped, ill or convalescent;
 - (d) a person with experience and knowledge sufficient to meet the needs of the persons and families for whom the person acts as a homemaker and with the ability to cope with their problems; and
 - (e) a person with ability to transmit his or her homemaking skills by simple, practical methods of instruction and demonstration.

5.0 Pricing

The cost of services shall be as set out in Appendix A.

For any given year of Homemaking Services, the City shall not be obligated to make any payments above the "Maximum Annual Proposed Price".

Payment Terms & Billing

Upon submission of invoices and reconciliation of discrepancies if any, the City will pay the Service Provider the applicable fees as set out in the Agreement.

Service Provider shall submit invoices to the City by the 10th day of the month which follows the month in which the services are being performed or any other day as mutually agreed upon.

The City will communicate all invoice discrepancies to the Service Provider and the Service Provider shall make required adjustments after billing reconciliation. Once Invoices have been reconciled to the City's satisfaction, they will be paid on the next payment schedule.

6.0 Termination

Termination Without Cause

- 6.1** The Service Provider may terminate the Agreement without cause and without penalty upon thirty (30) days' prior written notice to the City.
- 6.2** The City may terminate the Agreement without cause and without penalty upon seven (7) days' prior written notice to the Service Provider.

Termination With Cause

- 6.3** The City may terminate the Agreement if the Service Provider defaults in respect of any obligation provided for in this Agreement upon one (1) days' prior written notice to the Service Provider, without penalty.

7.0 Financial loss

The City shall under no circumstances be required to cover the Service Provider's operational losses in whole or in part at any time during the Agreement regardless of any circumstances that may be presented in the provision of Homemaking Services.

7.1 Loss or damage

The Service Provider shall maintain controls over the storage and safekeeping of property belonging to the Service Provider or their employees, agents or contractors. The City shall not be liable for any loss or damage such property stored on or off the premises, unless such loss or damage is as a result of the City's negligence.

7.2 Confidentiality

In accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*, the Service Provider, its directors, officers, employees, agents and volunteers will hold confidential and will 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 individual/organization concerned prior to the release or disclosure of such information or document and shall comply with the requirements regarding Personal Information and Confidentiality as contained in **Schedule "B"** attached hereto and forming part of this Agreement.

8.0 Occupational health and safety

8.1 The Service Provider shall abide by and enforce the requirements of the current Ontario Occupational Health and Safety Act, applicable Regulations, and the Workplace Hazardous Materials Information System (W.H.M.I.S.).

8.2 The Service Provider shall be considered the Employer as defined by the Ontario Occupational Health and Safety Act. The Service Provider shall appoint an appropriate number of supervisors to provide supervision to their employees. These supervisors appointed by the Service Provider will be considered Supervisors and must be Competent Persons as defined by the Ontario Occupational Health and Safety Act. A Competent Person is defined as:

A person who:

- a) is qualified because of knowledge, training and experience to organize the work and its performance;
- b) is familiar with the Ontario Occupational Health and Safety Act and the regulations that apply to the work; and
- c) has knowledge of any potential or actual danger to health or safety in the workplace.

8.3 In the event of a fire, death, critical injury, disabling injury, occupational illness or other circumstance described in the Occupational Health and Safety Act, the Service Provider shall notify the Ministry of Labour and any other groups or individuals as required. The Service Provider shall immediately advise the City's representative of the above occurrences.

8.4 The Service Provider will take every precaution reasonable in the circumstances for the protection of their employees, contractors and agents.

9.0 Accessibility for Ontarians with Disabilities Act training

The Service Provider shall ensure that it and all its volunteers, employees or agents, who 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.

10.0 Insurance The Service Provider shall at its own expense obtain and maintain until the termination of the contract, and provide the City with evidence of:

- a) Comprehensive general liability insurance on an occurrence basis for an amount not less than Five Million (\$5,000,000.) dollars and shall include the City as an additional insured with respect to the Service Provider 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 bidders' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses;

- b) Fidelity Bond Employee Dishonesty coverage in the amount of \$10,000. including a Third Party Extension
- c) 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 reasonable require.
- d) The Service Provider shall not commence work until satisfactory evidence of insurance has been filed with and approved by the Risk Management Division of the City. The Service Provider shall further provide that evidence of the continuance of said insurance is filed at each policy renewal date of the duration of the contract.
- e) The Service Provider shall carry Professional Liability Insurance covering the work and services described in this Agreement, such policy to provide coverage for an amount not less than Two Million (\$2,000,000.00) * dollars and shall include the City as additional insured with respect to all of the Service Provider operations relating to this Agreement and shall provide that the above- mentioned policies will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty(30) days prior to the date of cancellation or expiry.
- f) The Service Provider shall not commence work until satisfactory evidence of insurance has been filed with and approved by the City. Prior to the effective date of this Agreement and thereafter on renewal date of the insurance, 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 contract. 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; failure to procure and maintain said insurance shall constitute a default under this agreement.

11.0 Indemnification

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:

- (a) any breach of this Agreement by any of the Service Provider, the Service Provider's employees, any subcontractor of the Service Provider, or persons for whom the Service Provider is at law responsible;
- (b) any loss or misuse of funds held by the Service Provider, the Service Provider's employees, subcontractor of the Service Provider, or persons for whom the Service Provider is at law responsible, under this Agreement;
- (c) the acts or omissions of the Service Provider, the Service Provider's employees, subcontractor of the Service Provider, or any person for whom the Service Provider is at law responsible in performing Homemaking Services otherwise carrying on 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;
- (d) any claim or finding that any of the Service Provider, the Service Provider's employees, subcontractor of the Service Provider, 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
- (e) 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 the Homemaking Services or otherwise in connection with the Service Provider's business.

Workplace Safety and Insurance Board

- 11.1 The Service Provider shall furnish a WSIB Clearance Certificate indicating their WSIB firm number, account number and that their account is in good standing. This form must be furnished to the City prior to commencement of services. The Service Provider further agrees to maintain that good standing throughout the Term of the Agreement.
- 11.2 The Service Provider shall produce to the City a Clearance Certificate from the WSIB from time to time during the Agreement on request and/or prior to final payment.

12.0 Record Keeping

The Service Provider will keep and maintain proper records and books of account relating to Homemaking Services provided to clients and make them available to City upon request.

13.0 Right to Audit

- 13.1 The Service Provider shall establish and maintain a reasonable accounting system that enables the City to readily identify the Service Provider's assets, expenses, costs of goods, revenues, and taxes paid. City may audit the relevant books, records, and computer systems of the Service Provider from time to time to ensure that the Service Provider has properly complied with the provisions of this Agreement. Each such audit shall be conducted during regular business hours and shall not interfere unreasonably with Service Provider's business. The City shall give the Service Provider ten (10) Business Days prior notice of any such audit.
- 13.2 The Service Provider agrees to co-operate with the City's auditors, to provide access to Service Provider's books, records, and computer systems, and to allow the City's auditors to make and remove copies of the Service Provider's books and records. "City's auditors" includes City's internal auditors, as well as those external auditors retained by the City.
- 13.3 The Service Provider shall at all time during the Term of this Agreement and for a period of ten years after the completion of this Agreement, maintain such records. The Service Provider shall at any time requested by the City, and at its expense, make such records available for inspection and audit by the City.

14.0 Notice

- (a) Any notice or communication required or permitted to be given under the Agreement shall be in writing and served personally, delivered by courier or sent by registered mail, addressed to the other party:

To the City:	The Corporation of the City of London
Attention:	City Clerk
	City Hall
	300 Dufferin Avenue
	London, ON N6A 4L9

To the Service Provider:	CBI Limited
	3300 Bloor Street West, Suite 900
	Toronto, ON M8X 2X2

- (b) Any such notice mailed as aforesaid shall be deemed to be given to the addressee on the second (2nd) normal business day (Monday to Friday, excluding statutory holidays) following the date of such mailing. If a mail strike is in progress or there is reasonable prospect of a mail strike, such notice shall be given by courier.
- (c) Any Party may at any time give notice to the other Party of any change of address of the Party giving such notice and from and after the giving of such notice, the address therein specified shall be deemed to be the address of such Party.

15.0 Circumstances Beyond the Control of Either Party

Neither the Service Provider nor the City shall be liable for damage caused by delay or for failure to perform its respective obligations under the Agreement resulting from matters beyond the control of the City and the Service Provider including, strike, lockout or any other action arising from a labour dispute, fire (other than a fire caused by the Service Provider's negligence), natural flood, Act of God, war, riot or other civil insurrection, lawful act of public authority, all of which cannot be reasonably foreseen or provided against.

16.0 Severability

If any Term or provision of the Agreement or the application thereof to any person or circumstance shall to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such Term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining Term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

17.0 Independent Contractors

17.1 Nothing in this Agreement, shall be interpreted as creating an employer/employee relationship between the City (as employer) and the Service Provider or any of its employees, or agents as employed. The Service Provider acknowledges that it is being retained to deliver the services described herein and is responsible for the performance of its employees and agents. The Service Provider shall not represent itself, nor its employees or agents, to be the agent or employee of the City.

NOT AN AGREEMENT OF EMPLOYMENT

17.2 The Service Provider acknowledges and agrees this Agreement shall not in any 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 an employment relationship 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, R.S.C. 1985 c.1 (1st Supp); the Canada Pension 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, the Health Insurance Act, R.S.O. 1990, c.H.6; or any other employment related legislation, all as may be amended from time to time, or otherwise.

17.3 Notwithstanding paragraph 17.2, above, 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.

18.0 Amendments

All provisions of the Agreement shall remain in effect throughout the Term unless the parties agree, in a written document signed by authorized representative of both parties, to amend, add or delete any provision. The Agreement contains all agreements of the parties with respect to matters covered herein, superseding any prior agreements oral or written, and may not be changed other than by an agreement in writing signed by the authorized representative of the parties.

19.0 Governing law

This Agreement shall be governed by and interpreted in accordance with Ontario law.

20.0 Independent Legal Advice

The Service Provider acknowledges that it has had the opportunity to obtain independent legal advice with respect to this Agreement.

21.0 Assignment

Neither this Agreement nor any part of it or interest in it may be assigned, subcontracted or otherwise transferred by the Service Provider without the prior written consent of the City, which consent may be unreasonably withheld.

Such written consent shall be within the sole and unfettered discretion of the City and may include such terms and conditions as the City considers appropriate, but shall not, under any circumstances, relieve the Service Provider of its liabilities or obligations under this Agreement.

22.0 Waiver

A waiver of any failure to comply with any Term of this Agreement must be written and signed by the party providing the waiver. Each waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

SIGNED SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

By: _____
Ed Holder, Mayor

By: _____
Catharine Saunders, City Clerk

CBI Limited

By: _____
Omar Aboelela, Director of Operations, CBI
Limited
*I have the authority to bind the Corporation

Appendix A

	Year 1	Year 2	Year 3
Hourly Rate **	\$25.00	\$25.00	\$25.00
Maximum Annual Proposed Price*	\$175,000	\$175,000	\$175,000
Total Maximum Cost (3 Years)			\$525,000

*Maximum Annual Proposed Price based on the provided estimate of 7,000 hours per year

**HST Exempt

SCHEDULE "B"

Freedom of Information and Protection of Privacy

1. In this Schedule:
 - (a) "City Information" means General Information and Personal Information:
 - (i) provided by the City to the Service Provider in relation to this Agreement;
 - (ii) collected by the Service Provider in relation to this Agreement; or
 - (iii) derived by the Service Provider from General Information and Personal Information provided or collected under this Agreement;
 - (b) "Service Provider Information" means General Information and Personal Information, except City Information, provided by the Service Provider to the City in relation to this Agreement;
 - (c) "General Information" means recorded information that is not Personal Information; and
 - (d) "Personal Information" means recorded information about an identifiable individual, including,
 - (i) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
 - (ii) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
 - (iii) any identifying number, symbol or other particular assigned to the individual,
 - (iv) the address, telephone number, fingerprints or blood type of the individual,
 - (v) the personal opinions or views of the individual except if they relate to another individual,
 - (vi) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
 - (vii) the views or opinions of another individual about the individual,
 - (viii) personal health information, and
 - (ix) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.
2. All City Information shall remain the sole property of the City and any part of it or all of it shall be given by the Service Provider to the City within 5 Business Days of:
 - (a) the City's written request; or
 - (b) the termination or expiry of this Agreement.
3. Except for law enforcement purposes and in accordance with this Agreement, the Service Provider shall, when collecting City Information that is Personal Information:
 - (a) limit its collection of the information to that which is necessary for it to comply with this Agreement;
 - (b) make its best efforts to collect the information directly from the individual to whom the information relates by fair and lawful means; and
 - (c) identify the purpose for which the information is collected to the individual at or before the time of collection.
4. The Service Provider shall retain all City Information in a manner that protects its security and confidentiality.
5. Except:
 - (a) with the consent of the individual; or
 - (b) for law enforcement purposes and in accordance with this Agreement,

the Service Provider shall not use City Information that is Personal Information for purposes other than that for which it was collected.
6. Except for law enforcement purposes and in accordance with this Agreement, the Service Provider shall not disclose City Information in any manner whatsoever without the prior approval in writing of the City.
7. The Service Provider shall not destroy any City Information.

8. Subject to all applicable legislation, including the *Municipal Freedom of Information and Protection of Privacy Act*, the City may disclose:

- (a) any part of or all Service Provider Information; or
- (b) any part or all of this Agreement.