

Bill No. 340  
2020

By-law No. A.-\_\_\_\_\_ - \_\_\_\_

A by-law to approve an Amendment to the Agreement with Lifemark Occupational Health and Wellness Inc. for the provision of Occupational Therapy services at the Dearness Home; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 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 section 23.1 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;

AND WHEREAS The Corporation of the City of London and Lifemark Occupational Health and Wellness Inc. entered into an Agreement with effect as of February 1, 2019 for the provision of Physiotherapy and Occupational Therapy Services (the "Services") at the City's Long-Term Care Home ("Dearness Home");

AND WHEREAS The Corporation of the City of London and Lifemark Occupational Health and Wellness Inc. wish to amend the Agreement;

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

1. The Amending Agreement to the Lifemark Agreement entered into between The Corporation of the City of London and Lifemark Occupational Health and Wellness Inc., substantially in the form attached as Schedule 1 to this by-law, is approved.
2. The Mayor and City Clerk are hereby authorized to execute the Agreement approved in section 1, above.
3. The Managing Director Housing, Social Services and Dearness Home, or written designate, is delegated the authority to approve and execute such further and other documents, including amending agreements, that may be required in furtherance of the Lifemark Agreement that are consistent with the requirements contained in the Lifemark 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 or contingent liabilities of The Corporation of the City of London, subject to prior review and approval by the Managing Director Housing, Social Services and Dearness Home, and the Manager of Risk Management.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on November 10, 2020.

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First Reading – November 10, 2020  
Second Reading – November 10, 2020  
Third Reading – November 10, 2020

Schedule 1

THE AGREEMENT with effect as of the 1st day of February, 2019.

**BETWEEN:**

THE CORPORATION OF THE CITY OF LONDON  
(the "City")

OF THE FIRST PART

**-AND-**

LIFEMARK OCCUPATIONAL HEALTH AND WELLNESS INC.  
(“Lifemark”)

OF THE SECOND PART

WHEREAS the City requested proposals for the provision of Physiotherapy Services and Occupational Therapy Services for the City's Long-Term Care Home under the *Long-Term Care Homes Act, 2007* (“Dearness Home”), (the RFP);

AND WHEREAS Lifemark responded in writing to the RFP on October 17, 2018 to provide Physiotherapy Services, Occupational Therapy Services and Footcare Services (the “Services”) at the Dearness Home, (the Proposal);

AND WHEREAS the Physiotherapist and Occupational Therapist who will be providing the Services are licensed or accredited under all applicable laws and regulations and by all applicable authorities to provide Physiotherapy Services and Occupational Therapy Services;

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

**1.0 SERVICES**

1.0.1 The City hereby retains Lifemark to provide Physiotherapy Services, Occupational Therapy Services and Footcare Services at the Dearness Home and agrees to provide the Services in accordance with the Proposal which shall be deemed to form part of this Agreement.

**2.0 TERM**

2.0.1 The contract will commence February 1, 2019 for a three (3) year period terminating January 31, 2022 with an option to renew the contract for two (2) additional one (1) year periods in accordance with the Proposal which shall be deemed to form part of this Agreement.

**3.0 SCOPE OF SERVICE**

3.0.1 Lifemark agrees to provide all of the Services to the long-term care home residents of the Dearness Home (“Residents”) in accordance with all applicable laws and regulations, and policies and standards of the Dearness Home, as may be amended from time to time. Without limiting the foregoing, Lifemark will provide the following:

One (1) full time Registered Physiotherapist                      -38 direct care hours per week.

3 Physiotherapy Assistants

-112 direct care hours per week.

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

Lifemark shall provide the Services seven (7) days per week, with normal working hours being Monday to Friday – approximately between 8:00 a.m. to 6:00 p.m. Hours during the evening and weekends are available solely at the discretion of the consultant Physiotherapist. Each consultant professional is required to sign-in and sign-out of Dearness Home during their service visits. The half hour lunch break is not included in billable hours.

Lifemark guarantees and covenants that the Physiotherapist and Occupational Therapist who will be providing the Services are licensed or accredited under all applicable laws and regulations and by all applicable authorities to provide the Services.

- 3.0.2 Lifemark shall work as part of the Dearness Home's multi-disciplinary care team to deliver client-centred care in a long-term care home facility. Lifemark shall communicate with Residents, Dearness staff, and families of Residents regarding Resident goals, interventions, and outcomes, attend Care Conferences and RAP (Resident assessment protocols) when required and have direct participation in Dearness Home committees as mutually agreed between the parties.
- 3.0.3 Lifemark shall provide the Services to the Residents at mutually agreed times and dates with the Resident (where applicable) and Dearness Home.
- 3.0.4 Lifemark shall assess each Resident's need for physiotherapy; develop, implement and evaluate interventions to the specific assessed need to the individual. All new admissions will be assessed and the results of the assessment will be available to the interdisciplinary team within twenty (21) days of admission to the Home.
- 3.0.5 Lifemark shall assess Resident needs for seating, mobility devices and related restorative aids and work with Residents, families of Residents, Dearness staff, external suppliers and third-party payers to ensure the timely provisions of the appropriate seating/mobility/adaptive devices for the Residents.
- 3.0.5 Lifemark shall provide assistance to Dearness staff in identifying the seating, mobility and related assistive devices to provide greater independence to Residents in completing the activities of daily living as requested and within available time.
- 3.0.7 Lifemark shall provide educational in-service to the Dearness staff, Residents and family pertaining to physiotherapy/occupational therapy programs and services, including Nursing Rehab/Restorative Care education, Falls and Restraints, proper techniques for resident lifts and transfers, pain management, and palliative care, as mutually agreed between the parties.
- 3.0.8 Lifemark shall ensure that Lifemark employees or others for whom Lifemark is legally responsible ("Lifemark staff"): abide by Dearness Home and City of London policies; document and maintain records of treatment and resident interventions in accordance with professional and legal standards, Ministry of Health and Long Term Care requirements, and RAI MDS Coding for Assessment stipulations; and update Care Plans and record assessments and interventions on Resident clinical records (appropriate sections in P and G by Physiotherapist and sections Pb.1 by Occupational Therapist).

- 3.0.9 Lifemark shall ensure that Lifemark staff: provide the Dearness Home with statistical reports and quarterly audits; follow established procedures; and participate in CQI committees and satisfaction surveys.
- 3.0.10 Lifemark shall ensure that all Lifemark staff who provide the Services to the Residents of the Dearness Home are duly qualified to perform the work, are registered with the applicable regulatory body (e.g. College of Physiotherapists of Ontario, Occupational Therapist of Ontario), and comply with current professional standards.
- 3.0.11 Lifemark shall use its best efforts to provide consistency in the Lifemark staff it assigns to the Dearness Home and shall inform the Manager of Community Life or designate of any changes in Lifemark staff it assigns to the Home.
- 3.0.12 Lifemark shall immediately report any Resident-related injuries or incidents to the Manager of Community Life or designate arising from the Services.
- 3.0.13 Lifemark shall ensure its Lifemark staff properly use and oversee equipment, and immediately report any issues where equipment is not in proper working condition to the Manager Community Life or designate.
- 3.0.14 Lifemark shall participate in Dearness Home's Quality Assurance/Risk Management program and Accreditation preparation and survey. This includes participation in CQI committees at Dearness Home, satisfaction surveys and best practice initiatives that allow for improvement opportunities.
- 3.0.15 Lifemark shall provide foot care services including assessment and treatment following best practise guidelines developed by the College of Nurses of Ontario as well as defined in the RFP document at the agreed upon rate of \$25.00 per visit, or such other amount as agreed to in writing by the Manager of Community Life or designate.
- 3.0.16 Where consent is required to perform a treatment on a Resident, Lifemark shall ensure that such consent has been obtained in accordance with all applicable law, prior to performing such treatment.
- 3.0.17 Lifemark shall comply with all applicable laws, regulations, by-laws, and policies.

#### CONFIDENTIALITY

- 3.0.18 Lifemark shall ensure that Lifemark staff comply with applicable privacy legislation, including where applicable the *Municipal Freedom of Information and Protection of Privacy Act*, the *Personal Health Information Protection Act*, and the *Personal Information Protection and Electronic Documents Act*. Lifemark will (and Lifemark shall ensure Lifemark staff 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 Dearness Home Resident or City if applicable, prior to the release or disclosure of such information or document. Lifemark shall ensure that Lifemark staff do not access confidential Resident information except on a need-to-know basis.

#### **4.0 FEE SCHEDULE**

Annual Physiotherapy Funding is based on the number of licensed/approved beds in operation at the LTC home as of January 1 of each funding year.

Payment will be made on a monthly basis, based on the services received with the amount of funding City obtains from the Province of Ontario. Physiotherapy Funding will be subject to any adjustments as determined by the Ministry of Health.

Occupational Therapy Services will be provided at a billing rate of \$55.00 per hour for a minimum of 16 hours per week.

Lifemark shall submit electronic invoices to Dearness Home by the 5<sup>th</sup> day of the month that follows the month in which the Physiotherapy and Occupational Therapy services were performed. Hours of services billed must be reconciled with the actual worked hours of the sign in and out document. Dearness Home shall pay all invoices upon receipt once reconciliation confirmed. Foot Care is third party billing to residents that do not have a comfort account with Dearness Home.

#### **5.0 TERMS AND CONDITIONS**

##### **5.0.1 Indemnification**

Lifemark undertakes and agrees to defend and indemnify the City and hold the City harmless, at Lifemark'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 Lifemark, Lifemark staff or persons for whom Lifemark is at law responsible;
- (b) any loss or misuse of funds held by Lifemark under this Agreement;
- (c) the acts or omissions of Lifemark, its officers, agents, Lifemark staff, or others for whom it is responsible in law, arising out of the performance of its obligations under this Agreement.
- (d) any claim or finding that any of Lifemark, Lifemark staff, or persons for whom Lifemark 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 Lifemark, Lifemark staff, or others for whom Lifemark is at law responsible, in connection with the performance of the Services or otherwise in connection with Lifemark's business.

##### **5.0.2 Insurance**

Lifemark 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 Lifemark'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 bidders' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses;

- b) 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 policies appropriate to the work as the City may reasonably require.

#### 5.0.3 Workplace Safety and Insurance Board

Lifemark 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 prior to commencement of work, every sixty (60) days or upon receipt of a Clearance Certificate from WSIB throughout the contract and must be submitted with final invoice before payment is made. Lifemark further agrees to maintain their WSIB account in good standing throughout the contract period.

#### 5.0.4 Police Records Check and Vulnerable Sector Check - Screening

It is the responsibility of Lifemark to obtain a Police Records and Vulnerable Sector Check clearance for all Lifemark staff who will be providing the Services and ensure that the Checks are kept current throughout the contract period. Lifemark must make these documents available for review by the City upon request. The City will conduct random reviews (the City will provide Lifemark with advance notice) at Lifemark's office to ensure that there is documentation showing compliance. Failure to provide the documentation when requested could result in cancellation of the contract.

#### 5.0.5 Personnel

- a) All Lifemark staff shall be the employees of Lifemark, and Lifemark shall be solely responsible for the arrangement of relief, substitution pay, supervision, discipline, health and safety, Employment Insurance, Canada Pension, Worker's Compensations, leave, uniform, footwear and all other matters arising out of the relationship between employer and employee. Lifemark shall show due diligence in the hiring process to ensure that staff are appropriately screened for their ability to be employed in the physiotherapy and occupational therapy profession as well as the footcare nurse.
- b) Payment of employee fringe benefits including statutory holiday pay, overtime pay, severance pay, etc., shall be the responsibility of Lifemark.

#### 5.0.6 Meetings

Lifemark shall meet with the Manager Community Life or designate as required to discuss matters pertinent to the Services provided by Lifemark.

#### 5.0.7 Occupational Health and Safety

- a) Lifemark will abide by and enforce the requirement of the current Ontario Occupational Health and Safety Act, Regulations for Industrial Establishments, the Workplace Hazardous Materials Information System (W.H.M.I.S.) and other relevant regulations made under the Occupational Health and Safety Act.
- b) For the purposes of this contract Lifemark will be considered the Employer as defined by the Ontario Occupational Health and Safety Act. Lifemark will appoint an appropriate number of supervisors to provide supervision to their employees. These supervisors appointed by Lifemark 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:

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

Lifemark will establish and maintain a health and safety policy and program for the purposes of this contract. The policy and program will include, but is not limited to, the following elements:

- i) roles and responsibilities of the employer, supervisors and workers;
  - ii) procedures on the safe operation and maintenance of equipment, tools machinery, etc.;
  - iii) emergency and evacuation procedures;
  - iv) procedures for the reporting and investigation of health and safety concerns and injuries;
  - v) compliance with MSDS, labelling and training requirements of the Workplace Hazardous Materials Information System; and
  - vi) employee training on workplace hazards, safe work procedures, first aid, emergency procedures, etc.
- c) In the event of a fire, death, critical injury, disabling injury, occupational illness or other circumstance described in the Occupational Health and Safety Act, Lifemark will notify the Ministry of Labour and any other groups or individuals as prescribed or legislatively required. Lifemark will immediately advise the City's representative of the above occurrences.
  - d) On occasion the City may require that Lifemark adhere to the City's health and safety policies, procedures, practices, guidelines, etc. These requirements will be communicated by the City's representative as necessary. Any cost incurred for this purpose will be borne by Lifemark.
  - e) In addition to the above, Lifemark will take every precaution reasonable in the

circumstances for the protection of their employees.

#### 5.0.8 Assignment

Lifemark shall not, without written consent of the City's Manager of Purchasing and Supply or designate, make any assignment or any subcontract for the execution of any Services or product. The consent of the City's Manager of Purchasing and Supply or designate may be arbitrarily withheld.

#### 5.0.9 Compliance with the Accessibility for Ontarians with Disabilities Act, 2005

Lifemark shall ensure that all its employees, or others for whom Lifemark is legally responsible, receive training regarding the provision of the goods and services contemplated herein to persons with disabilities in accordance with the Customer Service Standards in the applicable Regulations (the "Regulation") made under the *Accessibility for Ontarians with Disabilities Act, 2005*, as amended (the "Act"). Lifemark shall ensure that such training includes, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding Customer Service Standards set out in the Regulation. Lifemark shall submit to the City, as required from time to time, documentation describing its customer service training policies, practices and procedures, and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents volunteers or others who received such training. The City reserves the right to require Lifemark to amend its training policies to meet the requirements of the Act and the Regulation.

### 6.0 TERMINATION

#### 6.01 Termination

The City reserves the right at its absolute sole discretion, to terminate this contract, for any reason or no reason, with at least thirty (30) days' advance written notice, without cause and without penalty.

#### 6.0.2 Termination - Non-Performance

- a) In the event that Lifemark, in the opinion of the Manager Community Life or the Dearness Home Administrator ("Administrator"), fails to perform the Services in accordance with the scope of work, terms and conditions as stated herein, the City reserves the right to terminate the contract with at least thirty (30) days' advance written notice, without penalty to the City, and contract for the services with an alternate service provider or issue a new RFP.
- b) In the event that one or more serious issues occur which affect the Resident's health or safety in the opinion of the Manager Community Life or Administrator, the Manager Community Life or Administrator reserves the right to terminate the contract immediately by providing written notice of same, without penalty to the City, and contract for the services with an alternate service provider or issue a new RFP.
- c) The Manager Community Life or Administrator reserves the right to request Lifemark to cease treatment on a Resident, if in the Manager Community Life's or Administrator's opinion the treatment being performed on a Resident can or is doing harm to the Resident.





7.0.6 Survival

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

7.0.7 Execution

Lifemark acknowledges that it has read this Agreement, understands it 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

  
\_\_\_\_\_  
Ed Holder  
Mayor

  
\_\_\_\_\_  
Catharine Saunders  
City Clerk

LIFEMARK OCCUPATIONAL HEALTH AND WELLNESS INC.

\_\_\_\_\_  
Date

Per (Signature):   
\_\_\_\_\_

Print Name: Liz Bellantyne


Print Title: Senior Vice President  
*I Have the Authority to Bind the Corporation*

\_\_\_\_\_  
Date

Per (Signature): \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_  
*I Have the Authority to Bind the Corporation*

CITY SOLICITOR'S OFFICE CITY OF LONDON	
DATE: <u>Jul 7/19</u>	
APPROVED AS TO FORM ONLY	