



**CITY OF HAMILTON**

**COMMUNITY SERVICES DEPARTMENT**  
**Housing Services Division**

<b>TO:</b> Chair and Members Emergency and Community Services Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> May 14, 2012	
<b>SUBJECT/REPORT NO:</b> Operating Agreement between the City of Hamilton as Service Manager and CityHousing Hamilton Corporation (CS12002) (City Wide)	
<b>SUBMITTED BY:</b> Joe-Anne Priel General Manager Community Services Department	<b>PREPARED BY:</b> Ron Wilson 905-546-2424 ext. 2754 Robert McKnight 905-546-2424 ext. 3753 Gillian Hendry 905-546-2424 ext. 4818
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the City of Hamilton, in its capacity as Service Manager under the Housing Services Act, 2011, enter into an Operating Agreement with CityHousing Hamilton Corporation (CHH) substantially in the form attached as Appendix A to Report CS12002;
- (b) That the General Manager of the Community Services Department or designate be authorized and directed to execute the proposed Operating Agreement between the City of Hamilton and CityHousing Hamilton Corporation in a form satisfactory to the City Solicitor; and,
- (c) The General Manager of the Community Services Department or designate be authorized and directed to approve and execute any amending or ancillary agreements as may be required to give effect to recommendation (a), in a form satisfactory to the City Solicitor.

**EXECUTIVE SUMMARY**

Currently, the City of Hamilton in its role as Service Manager for Social Housing does not have a legal Operating Agreement with CityHousing Hamilton (CHH). In other words, there is no mechanism in place that clearly states how CHH will be funded by the City or outlines the City's expectations of CHH regarding service levels and reporting requirements. A draft Operating Agreement between the City of Hamilton as Service Manager and CityHousing Hamilton Corporation, attached as Appendix A to Report CS12002 describes these expectations.

All other social housing providers, as well as the Municipal Non-Profit properties that are part of the CHH portfolio, are funded through a provincial "benchmarking" process legislated by the Province under the Housing Services Act, 2011. The "benchmarking" method was established by the Ministry of Municipal Affairs and Housing (MMAH) to ensure that all social housing providers received adequate funding to operate their housing projects. The main drivers in the "benchmark" process are operating costs and revenues. Examples of operating costs are maintenance, administration, principle interest and taxes and replacement reserve subsidy. Examples of revenue are rent geared to income and market rent revenue, parking, coin laundry, facilities and antennas.

It is not a provincial requirement under the Act to fund the former local Hamilton Housing Authority buildings that are part of the CHH portfolio with the "benchmarking" method. Therefore, up to and including the 2011 budget year, the CHH budget was based simply on revenue and expenditure figures submitted by CHH as part of the municipal budget process.

However, in 2012, the CHH budget was calculated using the provincial "benchmarking" formula. The "benchmarking" funding model provides a more stable and predictable funding source for CHH and parity with all of the other social housing providers in Hamilton. Multi-year planning is critical given the size of the CHH portfolio and the aging infrastructure of the buildings. A stable funding process will support CHH in effective asset management practices

As well as clarifying funding arrangements, the Operating Agreement outlines the City's expectations of CHH regarding operating requirements and obligations as well as the number of rent-geared-to income and modified units that must be provided by CHH.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:**

In 2012, the implementation of the “benchmarking” process for the Hamilton Housing Authority portion of CHH (5,000 units) will result in an increase of \$680,000 to the subsidy level. Compared to the prior years funding, there was an increase of \$650,000 in 2011 and \$810,000 in 2010.

**Staffing:**

There are no staffing implications for Report CS12002.

**Legal:**

There are no legal implications for Report CS12002.

**HISTORICAL BACKGROUND** (Chronology of events)

In 2001, the responsibility for social housing within the City of Hamilton was formally transferred from the Province of Ontario to the City. Local Housing Corporations were established as legal entities to assume ownership and operation of the social housing portfolio previously owned by the former Ontario Housing Corporation. The City became the sole shareholder of the Local Housing Corporation portfolio (the former Hamilton-Wentworth Housing Authority) and became responsible for all aspects of its management, operations and financing.

In 2006, three other social housing providers – Hamilton Municipal Non-Profit, Hamilton Portuguese Non-Profit Housing and Dundas Valley Non-Profit Housing were amalgamated with the Local Housing Corporation to form CHH and effective October 1, 2009, the ownership of First Place Hamilton was added to the CHH portfolio.

CHH is now the third largest social housing provider in Ontario, behind Toronto and Ottawa with a portfolio of 7,000 market and rent geared to income units.

**POLICY IMPLICATIONS**

There are no policy implications to Report CS12002.

**RELEVANT CONSULTATION**

CHH received a copy of the proposed benchmarking calculations and incorporated the resulting data as part of their 2012 budget process. The CEO of CHH and some members of the CHH Board were consulted in the development of the Operating Agreement. Concerns were expressed early in the consultation regarding timelines for reporting. The timelines were adjusted accordingly. No further concerns were identified.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

The City has two distinct roles in relation to CHH – one as the shareholder (owner) of CHH and another as Service Manager (funder).

As the sole shareholder for the Corporation, the City's role is largely defined by the Ontario Business Corporations Act, the legislation to which CHH is subject.

The Housing Services Act, 2011 defines a second role for City Council - that of Service Manager for all social housing programs in Hamilton including CHH. The Act sets out the funding and compliance obligations of municipalities for the delivery of social housing programs. It also defines minimum accountability obligations for the social housing providers which Municipal Service Managers must fund.

One of the objectives of the Operating Agreement is to fund all of the CHH units in accordance with the provincial benchmarking funding formula. The Provincial benchmark funding formula is sensitive to changes in both revenue and costs and ensures that the subsidies are fair and based on supporting data. The Operating Agreement supports a more predictable funding process and will bring parity between CHH's local Hamilton Housing Authority portfolio and the rest of the CHH stock. It is in the City's best interest as the sole Shareholder of CHH to provide a funding formula that allows CHH to plan for the future and to ensure its viability.

Other municipalities, such as Ottawa, Windsor and Toronto have entered into Operating Agreements with their municipally owned social housing providers.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Skilled, Innovative & Respectful Organization***

- ◆ A culture of excellence

***Financial Sustainability***

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

***Growing Our Economy***

- ◆ An improved customer service

***Social Development***

- ◆ Everyone has a home they can afford that is well maintained and safe

***Healthy Community***

- ◆ Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services)

**APPENDICES / SCHEDULES**

Appendix A to Report CS11022 – Draft Operating Agreement between City of Hamilton as Service Manager and CityHousing Hamilton Corporation

**OPERATING AGREEMENT**

This Agreement made in triplicate, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012  
*(The City will insert the date that this agreement is signed on behalf of the City of Hamilton)*

**BETWEEN:**

**CITY OF HAMILTON as the SERVICE MANAGER**

("SM")

OF THE FIRST PART

and

**CITYHOUSING HAMILTON CORPORATION**

("CHH")

OF THE SECOND PART

**WHEREAS:**

1. The City, in its role and function as service manager under the provisions of the *Housing Services Act, 2011*, is responsible for the administration and funding of housing programs in the City of Hamilton;
2. CityHousing Hamilton Corporation ("CHH") is the Local Housing Corporation in the City of Hamilton under the provisions of the *Social Housing Reform Act, 2000*;
3. The City has two roles in relation to CHH, one as shareholder and the other as Service Manager under the *Housing Services Act, 2011*.
4. The housing properties of CHH are integrated such that CHH owns, leases or manages a large housing portfolio of projects built over a period of several years under various funding programs;
5. It is the intention of the parties that housing programs under which CHH operates will be administered under the following principles:
  - a. both parties will seek to create stable and predictable funding for CHH;
  - b. both parties will seek to simplify and harmonize the social housing program structures and funding;
  - c. the City will require timely information required to prepare budgets and to fulfill its reporting obligations to the Province of Ontario and other agencies.

6. The funding provisions set out in this agreement are to commence on January 1, 2012, the beginning of CHH's fiscal year.

**THEREFORE**, the parties agree as follows:

## 1.0 INTERPRETATION

### 1.1 Definitions under the Act and Regulations

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, terms and expressions used in this Agreement that are defined terms and expressions under the Act or Regulations shall have the same meaning as in the Act or Regulations.

### 1.2 Definitions under this Agreement

"Act" means the *Housing Services Act, 2011* of the Province of Ontario, including any regulations made thereunder, and any statute or regulation that may be substituted therefore, as may be amended from time to time;

"Annual Information Return" means such social housing annual information return as may be prescribed under the Act;

"Auditor" means a person appointed by the SM to conduct an audit or investigation of CHH, pursuant to the provisions of this Agreement or the Director of Audit Services for the City of Hamilton;

"Effective Date" means January 1, 2012;

"Federal Operating Agreement" means an operating agreement to which the Government of Canada or Canada Mortgage and Housing Corporation was a party under a prescribed housing program, as may be amended from time to time;

"Housing Program" means one of the programs listed in Schedule 1 of Ontario Regulation 367/11 of the Act and may be referred to in this Agreement as the program category number used in that table;

"Housing Properties" for the purpose of this Agreement mean Housing Projects as defined within the Act;

"MMAH" means the Ontario Ministry of Municipal Affairs and Housing, Province of Ontario;

"Non-Profit Rent Supplement Agreement" means an operating agreement under a rent supplement program administered by the SM with respect to units in housing properties owned, leased or operated by CHH;

“Portfolio” means those housing properties owned, leased or managed by CHH and funded and administered under a housing program.

“Public Housing” mean the 5,130 units in the housing projects formerly owned by Hamilton Housing Corporation, the Government of Ontario or Ontario Housing Corporation.

“Regulations” means regulations made pursuant to the Act, and any regulations that may be substituted therefore, as may be amended from time to time.

“Shareholder” means the City of Hamilton as sole Shareholder of CHH.

“Shareholder Direction” means a Shareholder Direction approved by City Council as Shareholder of CHH.

“Term” of this agreement means January 1, 2012 until such time as this agreement is terminated in accordance with the provisions of this agreement.

## **2.0 NUMBER OF RENT-GEARED-TO-INCOME UNITS AND MODIFIED UNITS**

### **2.1 Number of Rent-Geared-to-Income Units (Service Level Standards)**

CHH shall ensure that it provides the required number of households receiving rent-geared-to-income assistance under Part V of the Act, as confirmed through the annual reporting process. Legislated Service Level Standards are, by program:

Public Housing: 5,130

Provincial Reformed: 1,100

Federally Funded: 87

Rent Supplements: 643

CHH will ensure that the overall service level standard of 6,960 units is achieved and maintained at the required level. Program service levels may vary as long as the total service level is achieved.

The above-mentioned units are identified for the purpose of legislated service level standards only. There are additional units within each program and within the CHH portfolio which may include separate Rent Supplement agreements, as outlined in 4.1 below.

**2.2 Increase or Decrease** Either party may request an increase or decrease the number of households referred to in Section 2.1 of this Agreement by the number specified by notice after mutual consultation



upon not less than three (3) months prior notice. Funding will be adjusted to enable administration and operation of additional subsidy units, where both parties have agreed to a change. Such an increase or decrease will be phased in as agreed by the parties.

### **2.3 Number of Modified Units**

CHH shall ensure that it provides a minimum of 152 modified units as confirmed through the annual reporting process. CHH will not decrease the number of modified units without the City's prior written permission.

## **3.0 OPERATION AND MANAGEMENT OF HOUSING PORTFOLIO**

### **3.1 Generally**

CHH shall carry on its business and exercise its powers in compliance with its incorporating documents and by-laws, the Act, the Regulations, a Shareholder Direction, and all Federal Operating Agreements and Non-Profit Rent Supplement Agreements and this agreement.

### **3.2 Operating Requirements**

CHH shall operate and manage its public housing subject to the provisions of Parts VI and VII of the Act and Ontario Regulation 367/11 in accordance with that Act and the Regulations, with respect to the following matters:

- (a) compliance with the prescribed conflict of interest provisions;
- (b) compliance with property management provisions;
- (c) compliance with eligibility rules, occupancy standards, priority rules and selection of households;
- (d) participation in the centralized waiting list system;
- (e) entering into leases and occupancy agreements and calculation of rent for all rent-geared-to-income units;
- (f) compliance with mandates;
- (g) compliance with the retention of records;
- (h) compliance with the provisions of annual reports;
- (i) permitting the SM to carry out an audit or investigation;
- (j) permitting the SM to carry out its remedies.

### **3.3 Restrictions by Transfer Order concerning CHH Housing Properties operating under Federal Operating Agreements**

The parties acknowledge that, pursuant to the terms of the transfer order(s) transferring the administration and funding of Federal Operating Agreements to the SM, and in respect of that part of the portfolio that is subject to Federal Operating Agreements:

- (a) the Minister retains the right to amend the reporting requirements imposed to CHH;
- (b) the SM may however impose additional reporting requirements on CHH;
- (c) the SM shall not, without prior written consent of the Minister, provide the SM's consent for any transfer, lease or disposition of or offer to list, advertise or hold out for transfer, lease or disposal of a housing property, or any part of it, that is subject to a mortgage insured under the *National Housing Act*;
- (d) the SM shall not, without the prior written consent of the Minister, provide the SM's consent for altering any condition or state of the property, excluding repairs and maintenance, against which a mortgage insured under the *National Housing Act* is registered;
- (e) the SM shall not, without prior written consent of the Minister, provide the SM's consent for amalgamating any projects, providers or properties, any one of which is subject to a mortgage insured under the *National Housing Act*;
- (f) the SM shall not, without the prior written consent of the Minister, exercise any mortgage remedies against any project of CHH, or agree to any amendment of the existing mortgage terms and conditions, where such mortgage is guaranteed by the Ministry;
- (g) CHH is required to complete an Annual Information Return (AIR) as set out by the SM; and
- (h) the SM shall not approve any new or replacement mortgage by CHH on a housing property, or any part of it, without prior consent of the Minister.

#### 4.0 **SUBSIDY FUNDING**

##### 4.1 **Preamble**

One of the purposes of this agreement is to streamline and stabilize the funding arrangement for CHH. The intent is that CHH shall be able to manage its operations on a portfolio basis while having a predictable and sustainable level of funding.

##### 4.2 **Funding Model for Provincial Reformed, Public Housing and Section Federally Funded Programs:**

By this agreement, and by the powers entrusted to the Service Manager by the Act, the parties agree that the level of funding for all of CHH's Public Housing and Federally funded stock shall be calculated in the same manner that the SM is currently required (i.e. pursuant to section 78 of the Act) to calculate the annual subsidy for the Provincial Reformed stock. This means that the SM will use the benchmarking formula set out in section 78 and Ontario Regulation 368/11 of the Act, to calculate the annual subsidy that the SM is to pay to CHH for all of CHH's Public Housing stock and Federally funded stock. Ongoing changes in subsidy funding will follow the funding model formula as established by the MMAH. This funding model uses annually updated indices that reflect changes in both revenue and expense benchmarks. The benchmark funding model remains in place for the Provincial Reformed properties. As such, all three programs will be subsidized under the same funding formula. This provides a more predictable funding model, one that allows both the SM and CHH to sustain adequate, predictable funding and CHH to maintain both Operating and Capital reserves on an ongoing basis.

CHH Programs and funding arrangements covered within this operating agreement:

The subsidy funding for the following CHH housing program remains unchanged:

1. Provincial Reformed – 1,100 units. The benchmark-funding model remains in place for the Provincial Reformed program.

As identified above the subsidy funding method for the following CHH housing programs has been revised effective January 1, 2012:

1. Public Housing – 5,130 units.
2. Federally Funded – 87 units.

#### **4.3 Funding Model, - Limited Dividend Federal and Equity Programs:**

The following CHH housing programs remain outside of this operating agreement:

Equity – 643 units. Subsidy funding remains as before through independent rent supplement agreements, which may be amended from time to time with the mutual consent of both parties.

#### **4.4 Establishment of Revenue and Expense Benchmarks for Public Housing and Federally funded stock**

It is acknowledged that the Housing Services Division for the City of Hamilton and CHH have worked together to develop the benchmarks required for the implementation of the funding formula. The revenue and expense benchmarks have been established using a methodology

consistent with that used for the Provincial Reformed portfolio legislated funding model implementation in 2006.

#### **4.5 Annual Subsidy Estimate Request**

CHH shall provide the SM with its subsidy estimates no later than October 1<sup>st</sup> for the following calendar for the properties funded under the three programs identified in 4.1 above and being the Public Housing and Provincial Reformed.

#### **4.6 Annual Subsidy Estimate Confirmation**

The SM shall provide CHH with confirmation of the annual subsidy estimate for the properties funded under all programs identified in Section 4.1 above no later than December 1<sup>st</sup> for the following calendar year. The SM agrees that, pursuant to this Agreement, the level of funding for the Public Housing Stock shall be set using the benchmarking formula set out in the Act, and that this level of funding shall be maintained by the SM unless this Agreement is amended or terminated pursuant to section 10.18 of this agreement.

#### **4.7 Annual Budget**

CHH shall provide the SM with its Board-approved budget for the entire CHH portfolio for the following calendar year, once approved.

#### **4.8 Annual Reconciliation**

CHH shall provide the Annual Information Return and financial statements by May 31<sup>st</sup> for the previous fiscal year. Once received, the year-end RGI subsidy, mortgage payments and property taxes will be reconciled to the actual amounts as reported in the Annual Information Return and financial statements. The SM shall provide CHH with a final financial reconciliation by November 1<sup>st</sup> for the previous fiscal year.

#### **4.9 Redevelopment of the Portfolio**

Any additional funds required for redevelopment of the portfolio would be subject to authorization by City Council.

#### **4.10 Payment Schedule**

Payments of the subsidy funding shall be made in equal monthly instalments on the first business day of the month, with monthly adjustments for increased or decreased mortgage payments based on actual renewals.

### **5.0 REPORTS, RECORDS**

#### **5.1 Annual Information Return**

CHH shall give the SM, within five (5) months of the end of its fiscal year, completed annual reporting requirements and audited financial statements in a form acceptable to the Housing Services Division, City of Hamilton.

Both parties acknowledge that an Annual Information Return is currently required for the Public Housing, Federally funded, and Provincial Reformed programmes along with those units covered within Rent Supplement Agreements. Accordingly, the parties acknowledge that they may be required to comply with the reporting requirements under the Act unless the Minister approves an alternate reporting format.

## 6.0 **DEFAULT**

### 6.1 **Triggering Events**

CHH agrees that the triggering events listed in Section 83 of the Act shall apply to all of CHH's housing properties subject to the Act and to the Public Housing and Federally funded stock, and that all the SM's remedies contained in Parts VI and VII of the Act, and all of the provisions of the Act and Regulations in connection with such remedies, shall apply to those properties. CHH shall comply with all of the obligations of a housing provider under Parts VI and VII of the Act in connection with the SM's exercise of such remedies.

### 6.2 **Additional Triggering Events**

The parties agree that the following events shall be deemed to be triggering events for the purpose of this agreement

- (a) a breach of a Federal Operating Agreement;
- (b) a breach of a Non-Profit Rent Supplement Agreement;
- (c) a breach of this agreement.

### 6.3 Remedies

The parties agree that if a triggering event listed in Section 83 of the Act occurs, or a triggering event for the purposes of this agreement occurs, the SM may, subject to the prior approval of the City as Shareholder for any action that requires Shareholder approval, exercise any one or more of the following remedies:

- (a) the remedies contained in Parts VI and VII of the Act, with the necessary changes in connection with public housing and housing properties operating under Federal Operating Agreements and Non-Profit Rent Supplement Agreements;
- (b) the remedies contained in a Federal Operating Agreement;
- (c) the remedies contained in a Non-Profit Rent Supplement Agreement;
- (d) remedy such default on behalf of CHH;
- (e) suspend or terminate the Schedule;
- (f) exercise any other remedy it has in law or equity.

#### 6.4 Notice

The SM shall not exercise a remedy under this agreement unless:

- (a) the SM has given CHH notice specifying the particulars of the triggering event; the activities that CHH must carry out or refrain from carrying out or the course of action that CHH must take or refrain from taking; and a reasonable period of time within which CHH must remedy such default; and
- (b) CHH fails to comply with the notice.

#### 6.5 Remedies Cumulative

All of the remedies and rights of the SM under the Act, the Regulations, a Shareholder Direction, the Federal Operating Agreements, the Non-Profit Rent Supplement Agreements, in this Agreement or otherwise available in law or equity are cumulative and no right or remedy is intended to be exclusive. Each right or remedy shall be exercisable by the SM in its sole and absolute discretion, and each right or remedy shall be in addition to every other right or remedy available to the SM from time to time.

#### 7.0 AUDIT

Without limiting the audit provisions in any Shareholder Direction, CHH shall permit the Auditor at any time during the Term of this agreement and for seven (7) years after its expiry or termination, and during CHH's usual business hours, to review all of CHH's materials, records and other documents relating to this agreement, and to enter and inspect any of CHH's housing properties at any reasonable time, provided that the SM gives CHH reasonable notice of its intention to do so.

#### 8.0 NOTICES

Any approval, consent, notice, communication, request, demand or document required or permitted to be given under this agreement ("Notice") to either party shall be sufficiently given if it is in writing and delivered by hand, fax or mail to the parties at the following addresses:

City: City of Hamilton  
Housing Services Division  
Community Services Department  
350 King St. E., Unit 110  
Hamilton, ON L8N 3Y3

Attention: Director, Housing Services Division  
Fax: (905) 546-2645

CHH: CityHousing Hamilton

55 Hess St. S., 23<sup>rd</sup> Floor  
Hamilton, ON L8N 4E5

Attention: Chief Executive Officer  
Fax: (905) 546-2762

If any Notice is so given, it shall be deemed to have been received on the date of delivery if delivered by hand, on the next business day if transmitted by fax, and on the third business day following the date of mailing. Any party may, from time to time, by Notice given as provided above, change its address for the purpose of this Section.

Any Notice permitted or required to be given by the SM may be given by the General Manager, Community Services Department for the City of Hamilton, from time to time, his or her successor, or his or her designate(s) from time to time (collectively, the "General Manager"). However, the General Manager specifically reserves the right to submit the issue of the giving of any Notice, or of the contents of any Notice, to City Council for its determination.

## 9.0 **COMMUNICATIONS WITH THE MINISTRY AND THE SM**

### 9.1 **Communication with the Ministry**

Any matter under the Act or Regulations that requires CHH to seek the prior consent of the Minister shall be referred by CHH to the SM for service manager consent.

Without limiting the generality of the foregoing, CHH shall obtain the SM's prior consent, and the SM shall, on behalf of CHH, seek the Minister's consent with respect to any of the following:

- (a) the disposition, mortgaging, encumbering, developing or redeveloping, or granting an interest in any real property transferred by a transfer order, as required pursuant to Section 161 of the Act;
- (b) the transfer, lease or other disposition of or the offering, listing, advertising or holding out for transfer, lease or other disposition of a housing property or any part of it, including any chattels in it, as required pursuant to Section 162 of the Act;
- (c) mortgaging, replacing or an existing mortgage, or otherwise encumbering a housing property, or the extension of the term of or otherwise amending any existing or approved mortgage or other encumbrance of the housing property, as required pursuant to Section 161 of the Act;

- (d) determining final amounts for benchmark revenue, operating costs, affordable mortgage payments, and benchmark market rents, pursuant to the Act;
- (e) amending the benchmark operating costs in respect of its housing properties, pursuant to the Act;
- (f) entering into a new debt repayment schedule with the Minister pursuant to the Act;
- (g) seeking any exemption from any of the requirements of the Act or Regulations.

Any matter under this Agreement that requires the SM to seek the approval of the Minister may be submitted to City Council by the General Manager, Community Services Department, for the City of Hamilton, for its determination, and in that event, the provisions of this Agreement pertaining to Ministerial approval shall be subject to City Council's determination.

## **9.2 Communication with Service Manager**

All formal communications and dealings between the SM and CHH, as parties to this agreement, shall be made in the manner provided by Section 8.0 of this agreement. No communication or dealing between CHH and any department, committee, or body functioning under the administration of the City shall be deemed to be a communication or dealing under the provisions of this Agreement, or to effect the City with notice of any such communication or dealing under this Agreement, unless made in the manner provided by Section 8.0 of this Agreement. No communication or dealing between CHH and the SM as a party to this Agreement shall relieve CHH from the responsibility of discharging its lawful obligations to the SM imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed by this Agreement.

Any matter that requires CHH to seek the consent of the service manager shall be brought to the attention of the SM by notice from CHH, in accordance with Section 8.0 of this Agreement.

CHH agrees to notify the service manager when CHH seeks Shareholder approval under a Shareholder Direction if the approval sought relates to the service manager's duties and functions under the Act. Such notice shall be in accordance with the provisions of Section 8.0 of this Agreement.

## **10.0 GENERAL**

### **10.1 Compliance with Shareholder Direction, etc.**



Nothing in this agreement shall relieve CHH from its obligations and duties under a Shareholder Direction, the Act, the Regulations, its incorporating documents and by-laws, the Federal Operating Agreements and the Non-Profit Rent Supplement Agreements.

#### **10.2 No Restrictions on SM**

Nothing in this Agreement shall be construed as limiting the powers and remedies of the SM under a Shareholder Direction, the Act, the Regulations, the Federal Operating Agreements and the Non-Profit Rent Supplement Agreements or otherwise available to the SM, from time to time.

#### **10.3 Amendments to Federal Operating Agreements and Non-Profit Rent Supplement Agreements**

The parties agree that if any provisions of this Agreement are inconsistent with Federal Operating Agreements or Non-Profit Rent Supplement Agreements, such Federal Operating Agreements and Non-Profit Rent Supplement Agreements shall be deemed to have been amended by the parties in accordance with the provisions of this Agreement.

#### **10.4 Amendment to Provincial Accountability Rules**

The parties agree that if any provisions of this Agreement are inconsistent with the provincial accountability rules prescribed in Ontario Regulation 367/11 pursuant to Section 27 of the Act, such provisions of this Agreement shall be deemed to be amendments, deletions or additions to the provincial accountability rules and shall be effective as of the Effective Date. To the extent that any provincial accountability rule is not inconsistent with the provisions of this Agreement, the parties shall continue to be bound by such provincial accountability rule.

#### **10.5 Amendments**

No modification or amendment to this Agreement shall be made unless agreed to by the parties in writing.

#### **10.6 Successors**

This Agreement shall be binding and inure to the benefit of the parties and their respective successors.

#### **10.7 Assignment**

CHH shall not assign any or all of its rights or any or all of its obligations under this Agreement to any person without the prior written consent of the SM.

**10.8 No Interference**

All rights and benefits and obligations of the SM under this Agreement shall be rights, benefits and obligations of the City in its capacity as a service manager under the Act and shall not derogate from or interfere with or fetter the rights, benefits and obligations of the City in its functions and capacity as a municipal corporation.

**10.9 Further Assurances**

Each of CHH and the SM shall execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement.

**10.10 Waivers and Consents**

No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by an authorized member or staff of the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under the Agreement shall constitute consent to, waiver of, or excuse for any other, different or subsequent breach.

**10.11 No Partnership or Joint Venture**

This Agreement is not intended to create, nor does it create, a joint venture or partnership between CHH and the SM. CHH is an agent of the SM only for the limited purposes provided for in the Act. It is acknowledged and agreed that CHH does not acquire any right, title or interest in any property of the SM by virtue of this Agreement.

**10.12 Invalidity**

If any part of this Agreement is held or rendered invalid or illegal by a court of competent jurisdiction, the remainder of this Agreement continues to apply.

**10.13 Headings**

The headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**10.14 Time**

Time shall be of the essence of this Agreement.

**10.15 Number and Gender**

In this Agreement, words in or implying the singular include the plural and *vice versa*, and words having a gender include all genders.

**10.16 Effective Date**

This Agreement shall be in effect as of the Effective Date.

**10.17 Termination of Agreement;** Either party may terminate this Agreement at any time without cause upon not less than one hundred and eighty days (180) days written notice to the other party. That notice may only be given prior to June 30<sup>th</sup> in any calendar year failing which the provisions of this Agreement shall apply during the following calendar year notwithstanding any subsequent notice of termination.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF each party to this agreement has caused this agreement to be executed by a person who is fully and completely authorized to sign this agreement on behalf of the party that is shown above the person's signature.

**CITYHOUSING HAMILTON CORPORATION**

Per: _____	Per: _____
Name: Brenda Osborne	Brian McHattie
Title: Chief Executive Officer	Chair, Board of Directors
I have authority to bind the Corporation	I have authority to bind the Corporation

**CITY OF HAMILTON, as Service Manager**

Per: \_\_\_\_\_  
Name: Joe-Anne Priel  
Title: General Manager, Community Services Department

Authorized by Item of the Emergency and Community Services Committee  
Report 12- , approved by Council on day of , 2012.