

CITY OF HAMILTON

COMMUNITY SERVICES DEPARTMENT
Housing & Homelessness Division

TO: Chair and Members Emergency and Community Services Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: September 8, 2011	
SUBJECT/REPORT NO: Residential Care Facility Subsidy Agreements (CS11049) (City Wide)	
SUBMITTED BY: Joe-Anne Priel General Manager, Community Services Department	PREPARED BY: Shari Webb 905-546-2424 Ext. 3600 Gillian Hendry 905-546-2424 Ext. 4818
SIGNATURE:	

RECOMMENDATION

- (a) That the General Manager of Community Services be authorized to enter into and sign the revised Residential Care Facility Subsidy Agreement with Residential Care Facility operators for delivery of the Domiciliary Hostel Subsidy; and,
- (b) That the General Manager of Community Services be authorized to terminate or refuse funding for operators who do not enter into the revised Residential Care Facility Subsidy Agreements.

EXECUTIVE SUMMARY

Report AUD11017 Audit Report 2010-13 – Domiciliary Hostels was received by the Audit and Administration Committee on June 22, 2011. One of the deficiencies identified through the audit was the administration of contracts, including the number of outstanding Subsidy Agreements and the lack of supporting documentation, such as proof of insurance on file. To strengthen the Domiciliary Hostel system, Internal Audit Services recommended that all non-compliance should result in the non-payment of subsidy.

The Community Services Department must enter into Residential Care Facility (RCF) Subsidy Agreements with RCF's that have subsidized beds. Sixty-two RCF's provide up to a maximum of 1040 subsidized beds for low income residents. The subsidized beds are called the Domiciliary Hostel Program. Thirty-six of the 62 RCF's with subsidized beds are operating without a Subsidy Agreement. The City increases its risk of liability by not obtaining signed agreements binding RCF operators to comply with the terms of the agreement.

The language in the Subsidy Agreement was updated, in consultation with Legal Services, on May 31, 2008 when all of the Subsidy Agreements expired. The revised Subsidy Agreement included a new requirement for the operator to submit an Audited Financial Report on an annual basis. Some of the operators objected to this requirement due to the cost that would be incurred by the operator and their reluctance to reveal confidential financial records.

After consultation with City's Finance and Administration staff, it was confirmed that the provision of an annual financial statement does not meet the City's intent, which is to provide the City with assurances of the financial stability and viability of the RCF. The content of an audited financial statement will not provide the information necessary to determine the quality of service provided at the RCF. Also, some RCF's have a mix of beds – both privately funded and subsidized. Audited Financial Statements do not separate operational costs out for each type of funding.

It may be the decision of some operators to refuse to sign the new Subsidy Agreement if they disagree with the outlined conditions. This occurred in 2008 and is the reason why a number of the operators do not have signed Subsidy Agreements. The City chose to negotiate with the operators to find a mutually agreed upon solution and to avoid a major disruption to the program, residents and operators.

To ensure that the Domiciliary Hostel Program is operating in compliance with provincial and corporate expectations, it may be necessary to terminate the Subsidy Agreement or refuse funding to any operator who refuses to enter into the terms and conditions of the agreement. It is the subsidy for low income residents that will be withdrawn, not the license to operate as a RCF. The RCF may continue to provide housing to residents who can afford to pay the full cost.

The intent is to have signed two-year Subsidy Agreements with supporting documentation in place, for all Residential Care Facilities with subsidized beds, by October 31, 2011. The term of this Subsidy Agreement has been limited to two years to allow time to review and implement recommendations that evolve from the Domiciliary Hostel Program Review. The implementation of some changes may impact the terms and conditions outlined in future Subsidy Agreements.

The revised agreement is attached as Appendix A to Report CS11049 - Residential Care Facility Subsidy Agreement.

Appendix B to Report CS11049 – Summary of Residential Care Facility Subsidy Agreements provides an overview of the status of the Subsidy Agreements.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial:

It is necessary for the operator to have a Subsidy Agreement in place to receive additional funding as outlined in Report CS11050 Domiciliary Hostel Program Re-Investment (June 22, 2011 E&CS Committee meeting). In 2011, each operator with subsidized beds will be eligible for \$1,000 for administrative costs and \$100 per resident for program activities for the residents. An addendum to the operator's Subsidy Agreement must be in place prior to receiving the funding.

Staffing:

There are no staffing implications for Report CS11049

Legal:

Residential Care Facility Operators may take legal action as a result of termination of the subsidy. The four stage termination process ensures that the City meets its obligations with respect to termination.

HISTORICAL BACKGROUND (Chronology of events)

The language in the Subsidy Agreement was updated, in consultation with Legal Services, on May 31, 2008 when all of the Subsidy Agreements expired. The revised Subsidy Agreement included a new requirement for the operator to submit an Audited Financial Report on an annual basis.

In response to concerns expressed by the Ontario Homes for Special Needs Association (OHSNA), the requirement was reduced in scope to a Review Engagement Report which was thought to be less detailed and costly. However, some operators continued to object to the City's request for financial verification. This created considerable delay in completing the Subsidy Agreements.

The OHSNA also raised concerns regarding the dispute resolution clause in the Subsidy Agreement. The OHSNA wanted the City to engage a third party arbitrator to resolve disputes rather than the General Manager of the Community Services Department. Legal Services staff recommended against the arbitration process and recommended that the City and operators continue to discuss any differences and reach consensus.

Recently, the OHSNA representatives have withdrawn their request for third party arbitration and have stated that they are satisfied with the dispute resolution provision in the Subsidy Agreement.

POLICY IMPLICATIONS

There are no policy implications for Report CS11049

RELEVANT CONSULTATION

The City of Hamilton Corporate Legal Services Division was consulted in the writing of the new Subsidy Agreement and the later revisions.

The City of Hamilton Treasury Services, Finance and Administration was consulted in the development of the financial requirements under the new Subsidy Agreement.

Discussions have taken place regarding the Subsidy Agreement at the Domiciliary Hostel Program Working Group. The Working Group is co-chaired by the Director of Housing and Homelessness Division and an operator/member of the OHSNA. Members include six operators (both members and a non-member of OHSNA), Housing and Homelessness Division staff and the Program Supervisor from the Ministry of Community and Social Services and City staff. The operators have expressed satisfaction with the removal of the financial requirements and are willing to work with the City to develop quality performance measurements and to explore alternate financial conditions for future agreements such as a letter of credit. They feel it is important to inform Council that the breach of a Subsidy Agreement is an unusual situation and to reinforce that most operators meet the requirements of the Agreement.

The operators on the Domiciliary Hostel Program Working Group have not seen the new Subsidy Agreement pending approval by City Council. They have however indicated a willingness to sign the new Subsidy Agreement and expressed an understanding of the urgency to have signed Subsidy Agreements in place for all operators.

ANALYSIS / RATIONALE FOR RECOMMENDATION

For future Subsidy Agreements, Housing and Homelessness Division staff will explore the possibility of a security deposit or letter of credit as a way to protect the City from incurring costs when there is a breach in the Subsidy Agreement. For example, there have been unusual circumstances when it has been necessary for the City to pay for

**SUBJECT: Residential Care Facility Subsidy Agreements (CS11049) (City Wide) -
Page 5 of 7**

the costs of staff and moving residents when an Operator abandoned the facility, and the cost of food when an Operator was unable to afford food for the residents.

Staff will also work with the operators to establish performance targets and measurements to monitor standards compliance and outcomes regarding the quality of service

It may be the decision of some operators to refuse to sign the new Subsidy Agreement if they disagree with the outlined conditions. The termination of the Subsidy Agreement is a four stage process:

- Subsidy Agreement is delivered with a letter identifying the specific return date of approximately 30 days and notification of the consequences if it is not returned.
- The owner/operator is called by telephone to ensure receipt of the Subsidy Agreement and determine intent to comply.
- If the Subsidy Agreement is not returned within 30 days, written notice is delivered with:
 - a termination date of subsidy for within approximately 60 days
 - a written submission date for within approximately 30 days
- Immediately after the written submission date, a letter is delivered to the owner/operator indicating whether the written submission was received. If received, the reply will confirm the termination date or an adjusted date. If not received, the letter will confirm that the letter was not received and will confirm the termination date.

It is planned to have signed two-year Subsidy Agreements with supporting documentation in place, for all RCF's with subsidized beds, by October 31, 2011.

- The first priority is the six new operators who are operating without a Subsidy Agreement.
- The second priority is the 21 agreements that expired May 31, 2008 and have not been renewed due to the dispute regarding the financial requirements.
- The third priority is the nine agreements that expired May 31, 2011.

If the subsidy is terminated, it will be necessary to move subsidized residents to another RCF. There is a 24% vacancy rate within the system which would accommodate subsidized bed transfers. A transfer to another facility will be difficult for some residents.

**SUBJECT: Residential Care Facility Subsidy Agreements (CS11049) (City Wide) -
Page 6 of 7**

A Framework for the Domiciliary Hostel Program was implemented by the Ministry of Community and Social Services (MCSS) in September 2006. The Ministry developed the policy to support municipalities to deliver the program in a manner that is consistent with the provincial mandate and represents value for the expenditure of provincial funds.

The City of Hamilton is presently not in compliance with Provincial policy nor the conditions of the Domiciliary Hostel funding as outlined below:

- Enter into service contracts with owners/operators;
- Monitor standards compliance;
- Take remedial action, where required; and,
- Report back to the Ministry as per normal reporting procedures.

On an ongoing basis, Consolidated Municipal Service Managers are responsible for:

- Verification that operators are meeting all standards as outlined in their service contract with the Service Manager;
- Verification that eligible tenants receive their monthly personal needs benefit; and,
- Verification that all tenants subsidized under the domiciliary hostel program are eligible under the mandate of the program.

ALTERNATIVES FOR CONSIDERATION

There are no alternatives for consideration associated with report CS11049.

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
- ◆ More innovation, greater teamwork, better client focus

Financial Sustainability

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

Intergovernmental Relationships

- ◆ Maintain effective relationships with other public agencies

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 CS11049 – Residential Care Facility Subsidy Agreement.

Appendix B to Report CS11049 – Summary of Residential Care Facility Subsidy Agreements

THIS RESIDENTIAL CARE FACILITY SUBSIDY AGREEMENT is signed in triplicate this
day of _____, 2____, and is

BETWEEN:

City of Hamilton
(the "City")

AND:

Agency Name
(the "Operator")

WHEREAS the Operator operates a residential care facility, as defined in this Subsidy Agreement:

known as _____ and

located at _____ (the "residential care facility")

AND WHEREAS section 12 of the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M.20, authorizes the Minister of Community and Social Services to enter into agreements with municipalities respecting the provision of social services and community services upon such terms and conditions may be agreed to by the Minister and the municipality;

AND WHEREAS, under section 12 of the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M. 20, the Minister of Community and Social Services has entered into an agreement with the City for subsidies to be paid by the City to the Operators of the residential care facilities;

NOW THEREFORE, the City and the Operator agree as follows:

DEFINITIONS AND INTERPRETATION

- 1. In this Subsidy Agreement the following terms shall have the following meanings:
 - (a) "business day" means 8:30 a.m. to 4:30 p.m. on a day on which the City's administrative offices are open for business;
 - (b) "Community Services Department" means the Community Services Department of the City;
 - (c) "care services" means any one or more of advice, information or supervision provided to tenants in the activities of daily living and may also include:
 - (i) periodic personal care, as required, such as the giving of medications, bathing assistance, assistance with feeding, incontinence care, dressing assistance, assistance with personal hygiene, and ambulatory assistance;
 - (ii) provision of recreational or social activities, housekeeping, laundry services, and assistance with transportation;

- (iii) personal emergency response services, including assistance in evacuating under emergency conditions due to mental limitations and/or developmental handicaps and limitations of the tenants;
- (d) “General Manager” means the General Manager of the Community Services Department or his or her designate;
- (e) “Operations Manual” means a document entitled “Operations Manual” to be developed by the Housing and Homelessness Division of the Community Services Department as approved by City Council and amended or replaced from time to time;
- (f) “per diem rate” means the rate of payment established by the City for a unit of service;
- (g) “residential care facility” means a residential complex that is occupied or intended to be occupied by four or more persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy, for which a licence is required under Schedule 20 of By-law No. 07-170, as amended, the City’s Licensing Code, and the term “facility” has a corresponding meaning;
- (h) “subsidized portion of the unit of service cost” means the subsidized portion of the cost of providing care services each month for each tenant, as determined by the General Manager in accordance with the direction of City Council calculated as:

$$(\text{the tenant's eligible days in a month} \times \text{the unit of service cost rate}) - (\text{the amount of the tenant's personal needs allowance}) - (\text{the tenant's required monthly contribution pro-rated over the month});$$
- (i) “tenant file” means a tenant’s file as required under Part VI, subsection 49(2) of Schedule 20 of City By-law No. 07-170, as amended, a billing file, including but not limited to a personal funds disbursement record and a trust account file;
- (j) “tenant of a facility” means a person:

[If this is a “seniors” Subsidy Agreement then add (and renumber accordingly):

- (i) who is 55 years old or older;]
- (i) who resides in the residential care facility and is provided with care services by Operator; and
- (ii) who requires assistance in paying for care services and is approved for such assistance by the General Manager,

and the term “tenant” has a corresponding meaning; and

- (k) “unit of service” means a period of 24 consecutive hours of care services.

2. In this Subsidy Agreement, words in or implying the singular include the plural and vice versa, and words having gender include all genders.
3. The following Schedules form part of this Subsidy Agreement:
 - (a) Schedule "A": Description of Reporting Requirements, *Per Diem* Rate and Payment
 - (b) Schedule "B": Domiciliary Hostel Program Framework, Section 4
 - (c) Schedule "C": Non-Disclosure Agreement

and the parties agree that unless the context clearly indicates otherwise, all references in this Subsidy Agreement to this Subsidy Agreement shall be deemed to include such Schedules.

SUBSIDY

4. The City shall not pay the subsidized portion of the unit of service cost:
 - (a) prior to approval being given to a person for assistance in paying for care services by the General Manager; or
 - (b) for the day a tenant is discharged from the facility.
5. The City shall not pay or be responsible in any way for the tenant's portion of any payments to the Operator, except the City may pay the tenant's required monthly contribution once in a two year period when the tenant is relocating to independent supported housing as approved in advance by the General Manager.
6. The City shall pay the subsidized portion of the unit of service cost for a maximum of ____ tenants at any one time.
7. The subsidized portion of a unit of service cost on the date of commencement of this Subsidy Agreement shall be as set out in Schedule "A" which may be revised from time to time by the City.
8. The Operator shall not maintain more than 24 beds in service in the facility including beds for tenants and for person paying privately for care services.
9. Section 8 does not apply if the facility had more than 24 beds in service and a subsidy agreement with the former Regional Municipality of Hamilton-Wentworth prior to January 1, 1991 or if the facility has been granted an exemption by City Council.
10. Either party shall notify the other party in writing of any change to a tenant's income on or before the third business day after becoming aware of the change.
11. The Operator shall notify the General Manager in writing on or before the third business day after a tenant is admitted to, is discharged from, is readmitted to, or vacates the facility or being admitted to hospital.

12. The Operator shall notify the General Manager in writing on or before the third business day after a tenant is absent from the facility for a period 24 consecutive hours or longer.
13. Unless the General Manager is satisfied that the tenant does not wish their bed held until their return, the City shall continue to pay the subsidized portion of the unit of service cost during an absence under section 11, if written notice has been given under that section and with the approval of the General Manager, for a maximum of 28 days in a calendar year. The subsidized portion of the unit of service cost will be adjusted by the City in accordance with the number of absences approved under this section.
14. Where the subsidized portion of the unit of service cost is paid by the City to the Operator under section 13, the Operator shall continue to maintain, for the absent tenant's exclusive use, their bed in service.
15. Upon giving one day's written notice to the Operator, the City may revoke its approval for assistance in paying for care services for a tenant if that tenant was or has become ineligible for such approval. The City's obligation to pay the Operator the subsidized portion of the unit of service cost for that tenant is terminated upon the giving of such notice.
16. The Operator shall provide units of service with all due skill and diligence and in accordance with: the Operations Manual; section 4 of the Domiciliary Hostel Program Framework, attached as Schedule "B"; and Schedule 20 of By-law No. 07-170, as amended.
17. The City shall not refer any person to the Operator.

BILLING AND PAYMENT

18. The City shall not make payments to the Operator until the Operator provides a signed invoice to the City accompanied by a monthly account and occupancy record for the immediately preceding month in accordance with the directions and the reporting format, whether electronic or otherwise, as required by the General Manager.
19. Unless otherwise stated, the Operator shall submit invoices to the City on or before the third business day of each month following the delivery of care services.
20. The City shall pay monthly invoices submitted by the Operator after they have been approved by the General Manager. The City may refuse to pay or delay payment of the invoices in respect of any tenant who was not eligible for the subsidized portion of the unit of service cost at the time when the care services were provided or as a result of a breach of this Subsidy Agreement by the Operator.
21. The obligation of the City to pay the amounts set out in this Subsidy Agreement shall be limited to the amount of funds approved for that purpose by City Council in its yearly budgets and is entirely dependent upon funds being made available by the Province of Ontario.

RECORDS AND AUDIT

22. The Operator shall keep records of the units of service cost provided to a tenant in accordance with the requirements of the City or the Ministry of Community and Social Services or both.
23. The Operator shall submit reports and other documents to the City as set out in Schedule "A".
24. The Operator acknowledges that failure to submit the reports or other documents required in accordance with section 23 may result in either the withholding of payment until such reports or other documents or both are submitted or in the termination of this Subsidy Agreement.
25. During the term of this Subsidy Agreement and for a period of seven years after the end of its term, the Operator shall make its books, accounts and records available at all reasonable times for inspection and audit by representatives of the City to ensure compliance with the terms and conditions of this Subsidy Agreement.
26. Upon reasonable written notice, the Operator shall permit representatives of the City to take copies and extracts from such books and records and shall furnish the City with such additional information as the City may require with reference to such books and records.
27. All reports prepared by the Operator and submitted to the City under this Subsidy Agreement, and all forms, electronic or otherwise, prepared by the City and completed by the Operator under this Subsidy Agreement shall become the sole property of the City including copyright therein.
28. The City or persons authorized by the City shall have the right, at all reasonable times, to inspect or otherwise review the services performed, or being performed and the premises where they are being performed.
29. Notwithstanding sections 25, 26 and 28 of this Subsidy Agreement, in circumstances of such a serious nature in the General Manager's opinion as would warrant the immediate review, audit or inspection, the Operator shall, without any prior notice and at any time:
 - (a) during the term of this Subsidy Agreement and for a period of seven years after the end of its term, make its books, accounts and records available for inspection and audit by representatives of the City to ensure compliance with the terms and conditions of this Subsidy Agreement;
 - (b) permit representatives of the City to take copies and extracts from such books and records and furnish the City with such additional information as the City may require with reference to such books and records; or
 - (c) permit the City or persons authorized by the City to inspect or otherwise review the services performed or being performed and the premises where they are being performed.

30. The sections under the heading "Records and Audit" shall survive the termination of this Subsidy Agreement.

OBSERVANCE OF APPLICABLE LAWS AND POLICIES

31. It is a condition of this Subsidy Agreement that the Operator, when carrying out its duties under this Subsidy Agreement, shall comply with: the Operations Manual; section 4 of the Domiciliary Hostel Program Framework, attached as Schedule "B", and all applicable federal, provincial and municipal legislation, regulations and by-laws, as amended, including, but not limited to, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Ministry of Community and Social Service Act*, R.S.O. 1990, c. M.20, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A and the *Building Code Act, 1992*, S.O. 1992, c. 23.
32. The Operator shall ensure that its directors, officers, employees, contractors and volunteers are familiar with the obligations of the Operator with respect to: the Operations Manual; section 4 of the Domiciliary Hostel Program Framework, attached as Schedule "B"; and all applicable federal, provincial and municipal legislation, regulations and by-laws, as amended.
33. The Operator shall give the required notices and comply with the laws and by-laws, rules, regulations, codes and orders of the authorities having jurisdiction that are, or become in force during the performance of the services under this Subsidy Agreement including but not limited to those which relate to the preservation of the public health and to health and safety.
34. The Operator shall notify the City immediately in writing of any legal proceeding alleging a non-compliance by the Operator in respect of any laws, by-laws, rules, regulations, codes or orders which relate to the operation of the residential care facility.
35. The Operator shall provide the General Manager with satisfactory evidence that a licence under Schedule 20 of City By-law No. 07-170, as amended, has been issued for the operation of the residential care facility prior to the commencement of this Subsidy Agreement and thereafter annually on or prior to the renewal date of the Operator's licence as indicated by the City's records.
36. The Operator shall provide the General Manager, prior to the commencement of this Subsidy Agreement and thereafter immediately upon any change taking place, with:
- (a) a certified copy of their corporate profile report of their limited partnerships report and the certified copy provided prior to the commencement of this Subsidy Agreement shall be dated no earlier than 30 days before said commencement; and
 - (b) a copy of the form of agreement that their tenants enter into with respect to care services.

CONFLICT OF INTEREST

37. The Operator confirms that neither they nor any of their officers, directors, shareholders or partners or their family members (“Associates”) are employed by the City to process eligibility for the subsidized portion of the unit of service cost, to review funding or invoices or otherwise administer this Subsidy Agreement, or to place individuals in residential care facilities. Under this section “family member” means:
- (a) spouse, including but not limited to common-law partner;
 - (b) child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew;
 - (c) mother-in-law, father-in-law, sister-in-law and brother-in-law;
 - (d) step-mother, step-father, step-sister, step-brother and step-child; and
 - (e) child, mother or father in a relationship where the role of parent has been assumed.
38. The Operator agrees that neither they nor any of their Associates shall enter the employment of the City to process eligibility for the subsidized portion of the unit of service cost, to review funding or invoices or otherwise administer this Subsidy Agreement, or to place individuals in residential care facilities during the term of this Subsidy Agreement without the prior written consent of the General Manager.

CONFIDENTIALITY

39. The parties acknowledge that the collection and use of all information collected by the Operator pursuant to this Subsidy Agreement is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, (“MFIPPA”), and the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, as amended, (“PHIPA”) and that the Operator shall provide the services under this Subsidy Agreement in compliance MFIPPA and PHIPPA.
40. The Operator shall maintain the physical security of all data, information, reports, material and other documents relating to this Subsidy Agreement notwithstanding the medium in which such data, information, reports, materials or other documents are received or stored (including facsimile transmission) in accordance with MFIPPA, PHIPA and all other relevant privacy legislation and shall advise the City immediately in the event of a security or privacy breach.
41. The Operator shall ensure that its directors, officers, employees, contractors and volunteers are familiar with the obligations of the Operator with respect to MFIPPA and PHIPA or have no access to personal information protected under MFIPPA or personal health information protected under PHIPPA.

42. The Operator specifically agrees that it shall be bound by and that it shall abide by the terms of the Non-Disclosure Agreement, attached to this Subsidy Agreement as Schedule "C".

INSURANCE

43. The Operator shall obtain and maintain during the term of this Subsidy Agreement a policy of Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, and non-owned automobile and having an inclusive limit of not less than \$2,000,000 endorsed to include the City of Hamilton as additional insured.
44. The Operator shall deposit with the City a certificate of insurance within 30 days after commencement of services under this Subsidy Agreement. Certificate shall reference the agreement and provide that at least 30 days' prior written notice shall be given to the City by the Insurer before the Insurer or Operator takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof. The Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Community Services, Residential Care Facilities. All certificates, cancellation, non-renewal or adverse change notices should be mailed to this address.

INDEPENDENT CONTRACTOR

45. The Operator acknowledges and agrees that this Subsidy Agreement shall in no way be deemed or construed to be an agreement of employment. Specifically, the parties agree that it is not intended by this Subsidy Agreement that the Operator or any person employed by or associated with the Operator 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 (5th Supp.), the *Canada Pension Act*, R.S. 1985, c. C-8, the *Employment Insurance Act (Canada)*, 1996, c. 23, the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. 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 amended.
46. The Operator acknowledges and agrees that it has the sole and exclusive responsibility of making its own determination of its status under the Acts referred to in the immediately preceding section and, in particular, to comply with any applicable provisions of those Acts and to make any payment required thereunder.
47. It is expressly understood by the parties that the Operator is acting as an independent contractor in the performance of this Subsidy Agreement and that the Operator, its officers, directors, employees or agents shall not be deemed to be the employees, agents, partners of, or in a joint venture with the City.
48. The Operator shall be solely responsible for the payment of any individuals employed, engaged or retained by the Operator for the purpose of assisting it in the fulfilment of its obligation under this Subsidy Agreement.

FORCE MAJEUR

49. The obligations of the Operator shall be suspended during any period of time in which the Operator is, as a result of strike, lock-out or other labour dispute, breakdown of plumbing, sewage, electrical or heating systems of the buildings used by the Operator, a shortage of any essential service to the buildings, or a complete or partial destruction of the buildings, or any order of any public authority having jurisdiction to prohibit or suspend use of the building by the Operator, or any act of God, prevented from continuing to provide care services.

INDEMNITY

50. The Operator acknowledges that the City shall not be liable to the Operator or any other party in relation to the provision of the services under this Subsidy Agreement and the parties agree that the Operator shall not be deemed an agent of the City for any purpose.
51. The Operator hereby covenants and agrees to defend, indemnify and save harmless the City from any and all claims, demands, losses, charges, liabilities, actions, causes of action and any other proceeding of any nature made or brought against, suffered or imposed upon the City or its property in respect of any loss, damage, injury or death to any person or property directly or indirectly arising out of, resulting from or sustained by reason of the performance of the Operator of its obligations under this Subsidy Agreement.

DISPUTE RESOLUTION

52. The parties agree that open and direct communication on an ongoing basis is the optimal method to mitigate against serious conflicts developing under this Subsidy Agreement. In the event that there is disagreement between the Operator and the City concerning either party's performance or any of its responsibilities under this Subsidy Agreement, the following process, subject to section 53, shall be followed:

Stage 1:

- the problem is clearly identified by the parties
- a discussion occurs between the individuals involved to address the possible resolution of the problem
- resolution occurs by consensus if possible

Stage 2:

- communication occurs with the supervisors/managers of the individuals involved
- a discussion occurs among the supervisors/managers and the individuals to address the possible resolution of the problem
- resolution occurs by consensus if possible

Stage 3:

- in the event of an unresolved problem, it may be appropriate for senior management of the parties to become involved
- resolution occurs by consensus if possible

53. The parties agree that nothing contained in section 52 shall affect or modify the rights of early termination under this Subsidy Agreement.

NO ASSIGNMENT

54. The Operator shall not assign any of their rights or obligations with respect to this Subsidy Agreement.

55. The Operator shall notify the General Manager in writing of a proposed sale or other transfer of the residential care facility at least 60 days' prior to the closing date of the proposed sale or other transfer and such notice shall include proof that the purchaser or transferee has been informed in writing of the fact that the Operator has a Subsidy Agreement with the City which may be assigned only with the prior written consent of the City.

56. Arrangements to allow for the continuation of payments while the sale or other transfer of a residential care facility from one Operator to another Operator is taking place, including the issuing of hard-copy cheques by the City, may be made with the prior written consent of the General Manager whose consent may include such conditions as he or she considers, in his or her sole discretion, appropriate.

MISCELLANEOUS

57. This Subsidy Agreement and all matters relating to this Subsidy Agreement, its construction, validity, effect, interpretation, infringement and remedies shall be governed by and construed in accordance with the laws of the Province of Ontario and the parties specifically submit to the exclusive jurisdiction of the courts of the Province of Ontario.

58. Any provision of this Subsidy Agreement, which is or becomes prohibited or unenforceable in any jurisdiction, shall not invalidate or impair the remaining provisions of this Subsidy Agreement, which shall be deemed severable from the prohibited or unenforceable provision and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.

59. The fact that the City refrains from exercising a remedy it is entitled to exercise under this Subsidy Agreement shall not be considered to be a waiver of such right and, furthermore, partial or limited exercise of a right conferred upon the City shall not prevent the City in any way from later exercising any other right or remedy under this Subsidy Agreement or other applicable law.

60. Each of the parties agree to execute any additional documentation or give such further assurances as may be required by any of them from time-to-time in order to give effect to the spirit and intent of this Subsidy Agreement.

61. This Subsidy Agreement and its Schedules “A”, “B” and “C” constitute the entire agreement between the parties and cancels and supersedes any prior agreements or undertakings, written or verbal, in respect of it.
62. In the event of the expiration or termination of this Subsidy Agreement for any reason whatsoever, the provisions of this Subsidy Agreement that by their nature extend beyond the expiration or termination shall survive and remain in effect until all obligations are satisfied.

TERM

63. This Subsidy Agreement shall be for two years commencing June 1, 2011 and ending May 31, 2013 unless terminated by either party pursuant to sections 64, 65, 66 or 67 of this Subsidy Agreement.
64. This Subsidy Agreement shall be renewed automatically at the end of the term as set out in the immediately preceding section for a successive term of one year, except that either party may terminate this Subsidy Agreement at the end of the term by giving not less than 30 days’ prior written notice to other party.

TERMINATION

65. Either party may terminate this Subsidy Agreement at any time without cause upon not less than 30 days’ prior written notice to the other party.
66. If, in the sole discretion of the City, there has been a breach of any term, warranty, representation, condition or provision of this Subsidy Agreement (including: the Operations Manual; or section 4 of the Domiciliary Hostel Program Framework, attached at Schedule “B”), at the City’s written request, the Operator shall provide a written explanation with respect to the breach. The City may terminate this Subsidy Agreement upon not less than 10 days’ prior written notice to the Operator if:
 - (a) the written explanation does not satisfy the General Manager, in his or her sole discretion, that the breach is being adequately addressed; or
 - (b) the written explanation, or any part of it, is not provided to the City within any time limit set out in the City’s written request.
67. The City may terminate this Subsidy Agreement immediately upon giving written notice to the Operator if:
 - (a) in the sole discretion of the City, there has been a breach of any term, warranty, representation, condition or provision of this Subsidy Agreement (including: the Operations Manual; or section 4 of the Domiciliary Hostel Program Framework, attached as Schedule “B”);
 - (b)(i) the Operator is adjudged bankrupt or is insolvent according to the *Bankruptcy and Insolvency Act*, R.S. 1985, c. B-3, as amended, or its regulations;

- (ii) a receiver or trustee of the Operator's property and affairs is appointed; or
- (iii) the Operator makes an assignment, proposal, compromise, or arrangement for the benefit of its creditors, is petitioned into bankruptcy, or files for the appointment of a receiver; or

(c) the Province on Ontario terminates funding to the City for domiciliary hostels.

- 68. In the event the City terminates this Subsidy Agreement, the Operator acknowledges and agrees that the City shall have no liability to the Operator whatsoever for any loss which may be suffered by the Operator as a result of the termination.
- 69. Upon termination of this Subsidy Agreement, the Operator shall reimburse forthwith to the City any monies advanced by the City, which are not expended in accordance with this Subsidy Agreement.

AMENDMENT OF AGREEMENT

- 70. This Subsidy Agreement may be amended only by written agreement between the parties and no amendment of any of the provisions of the Subsidy Agreement shall be deemed valid unless it is in writing.

NOTICE

- 71. Any notice to be given under this Subsidy Agreement shall be deemed to be sufficient if delivered by hand, prepaid courier, registered mail, fax or e-mail as follows:

(a) To the City:

Program Manager, Residential Care Facilities and Hostels Unit
Housing and Homelessness Division
Community Services Department
City of Hamilton
71 Main Street West, Hamilton, ON L8P 4Y5
fax: (905) 540-5072

(b) To the Operator:

Executive Director/ OPERATOR
AGENCY/ NAME OF COMPANY
Street
Hamilton, ON
POSTAL CODE
fax:

- 72. Any notice under this Subsidy Agreement delivered by hand or prepaid courier shall be deemed to be received on the date of actual delivery. Any notice under this Subsidy Agreement sent by fax or e-mail shall be deemed to have been received on the first

business day after transmission was made. Any notice under this Subsidy Agreement sent by registered mail shall be deemed to have been received on the fifth business day after which the notice was mailed.

The parties are signing this Subsidy Agreement on the date stated in the introductory clause.

[Corporation or Partnership]

Agency Name

CITY OF HAMILTON

By:

By:

Name:

Name:

Position:

Position:

I have authority to bind Agency Name.

By:

Name:

Position:

I have authority to bind Agency Name.

[Individual]

Agency Name

CITY OF HAMILTON

By:

Name:

Name:

Position:

Position:

In his/her own capacity.

Schedule "A"

DESCRIPTION OF REPORTING REQUIREMENTS, PER DIEM RATE AND PAYMENT

Table 1

REPORTING REQUIREMENTS

REPORTS	ACTIVITIES	TIMELINE
<p>1. General Reporting</p>	<p>Business Licence Submit to the City copy of valid Schedule 20 licence.</p> <p>Corporate Profile / Limited Partnership Report Submit a certified corporate profile report or limited partnerships report.</p> <p>Care Services Agreement Submit the form of agreement that their tenants enter into with respect to care services.</p> <p>Insurance Submit Certificate of Insurance.</p> <p>Transfer Notice of sale or other transfer of the residential care facility.</p> <p>Assault/Injury/Death Report occurrences of assault, injury or death.</p>	<p>Before Commencement, Annually and Upon Request</p> <p>Before Commencement, Upon Change and Upon Request</p> <p>Before Commencement, Upon Change and Upon Request</p> <p>Before Commencement, Annually and Upon Request</p> <p>At least 60 days prior to the closing date</p> <p>Within 24 hours after the occurrence</p>
<p>2. Payment Reporting</p>	<p>Submit billing.</p> <p>Submit any supporting documents requested by the City, e.g. attendance records, transportation records.</p> <p>Submit confirmation of discharge and admissions through the month.</p> <p>Submit record of the number of absence days used / remaining.</p>	<p>Monthly</p> <p>Monthly</p> <p>Monthly</p> <p>Monthly</p>

Per Diem Rate

1. The *per diem* rate for a unit of service, provided pursuant to this Subsidy Agreement shall be \$47.75.

Payment

2. The following applies with respect to payment of the subsidized portion of the units of service:
 - (a) The City shall pay the Operator for the subsidized portion of each unit of service cost as described under this Subsidy Agreement.
 - (b) The units of service must be appropriately detailed and billed as set out in this Subsidy Agreement.
 - (c) Unless otherwise agreed in writing between the parties, the Operator shall use the funds provided under this Subsidy Agreement solely for the specific activities described in this Subsidy Agreement.
 - (d) The City may deduct any overpayment for any particular monthly statement from any subsequent monthly payment made to the Operator.
 - (e) The Operator shall notify the City in writing of any overpayments, unexpended balances, and disallowed expenses and shall repay these to the City, upon request. The City may collect any and all overpayments from the Operator and the Operator's heirs, administrators, successors and assigns, for a period of up to six years after the date on which the overpayment occurred.

Schedule "B"

Domiciliary Hostel Program Framework

Section 4

4. That at minimum, the following is provided [by the Operator] to all adults funded under the domiciliary hostel program:

Per Diem Funding (currently \$47.75 per day):

- Room and board:
 - Bedroom furnishings including comfortable mattress with waterproof cover, pillow, dresser with adequate storage for personal clothing, chair and light.
 - Linens including bed sheets, pillowcase, blankets, towels and washcloths.
- Assistance with activities of daily living (including housekeeping, laundry and personal hygiene/care):
 - Meals including three meals daily, snacks between meals and access to beverages in addition to water with all snacks and meals.
 - Housekeeping including daily and weekly cleaning of all living spaces.
 - Laundry including laundry supplies (e.g. detergent) and including the machine washing and drying of linens and tenants' personal clothes.
 - Personal hygiene supplies including shampoo, soap, deodorant, toothpaste, toothbrushes, toilette tissue, facial tissue, hairbrushes, combs, razors/ shavers, shaving cream and feminine hygiene products.
 - Opportunities for regular recreational/leisure activity.
- 24 hour staffing

Personal Need Benefit (currently \$130.00 per month):

- The personal need benefit is intended to be general spending money for the tenant. It is not intended for the purchase of items of personal care that are to be provided by the owner/operator or to pay for regular recreational/leisure activities provided in-house as part of general activities of daily living.

Schedule "C"

NON-DISCLOSURE AGREEMENT

The Operator acknowledges and agrees that, in the course of performing its obligations under this Subsidy Agreement, the Operator may become aware of personal and proprietary information which the City requires to be held in confidence ("Confidential Information") in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended ("MFIPPA"),

The Operator agrees that:

1. Confidential Information shall include any personal, business, marketing or other information, and, in particular, any information relating to clients of the Operator, from whom information is gathered for the purposes of the Operator fulfilling its obligations under this Subsidy Agreement, including the names, birth dates and any other identifiable information of the particular applicants and subsidized clients.
2. The Confidential Information shall be kept in confidence by the Operator and shall not be disclosed to any individual or group, except pursuant to MFIPPA.
3. Notwithstanding section 2 of this Schedule, employees of the Operator may have access to the Confidential Information only as required for those employees to facilitate the Operator's obligations under this Subsidy Agreement.
4. In the event that employees of the Operator become aware of Confidential Information in the course of carrying out duties related to this Subsidy Agreement or through other activities, the Operator shall ensure that such employees maintain all such information as confidential and that the employees do not disclose or release the information to anyone.
5. The Operator shall further ensure that access to the Confidential Information is restricted only to those employees of the Operator necessary to provide the services under this Subsidy Agreement and that all such employees execute personal non-disclosure agreements that meet the terms of this Non-Disclosure Agreement.
6. The Operator shall ensure that all reasonable safety measures are used during the provision of the services under this Subsidy Agreement so as to prevent the unauthorized disclosure, copying, destruction, use or modification of the Confidential Information.
7. No person shall wilfully use, disclose or retain the Confidential Information other than as provided for under this Subsidy Agreement or this Non-Disclosure Agreement.
8. Upon the City's request, the Operator shall submit to the City all versions of Confidential Information.
9. The Operator shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs, damages or liability whatsoever which the City, its employees, officers or agents may suffer as a result of negligence of the Operator, its employees, officers or agents in the breach of this Non-Disclosure Agreement.

RESIDENTIAL CARE FACILITIES ACCOMMODATIONS (SUBSIDIZED)

SUMMARY BY WARD	HOME	ADDRESS	WARD	CAPACITY		AGREEMENT END DATE
				LICENSED	SUBSIDIZED	
Ward 1						
2 agreements overdue	Community Residential Care Home	153 George Street	1	11	10	5/31/2008
	Westdale Manor	809 King Street West	1	18	18	5/31/2008
	Olga Stella Manor	66 Skyview Drive	1	6	6	3/31/2012
	Pat's Lodging Home	237 Herkimer Street	1	9	9	3/31/2012
	Queen's Lodge	36 Queen Street North	1	10	5	3/31/2012
Ward 2						
12 agreements overdue	C-More's Villa#1	60 West Avenue South	2	20	20	5/31/2008
1 new agreement not returned	Community Residential Care Home	255 Caroline Street South	2	9	9	5/31/2008
	Faith Hope Manor	178 John Street North	2	24	24	5/31/2008
	Maxwell's Retirement Home	274 Bay Street South	2	20	20	5/31/2008
	Sampaguita Lodging & Rest	265 Bay Street South	2	16	16	5/31/2008
	St. Patrick's Lodge	90 Emerald Street South	2	20	20	5/31/2008
	Verolen's Rest Home	106 Catharine Street South	2	15	15	5/31/2008
	Wellington Lodge	94 Wellington Street South	2	10	10	5/31/2008
	Cathmar Manor	236 Catherine St. N	2	45	24	5/31/2011
	Emerald Lodge	83-85 Emerald Street South	2	40	40	5/31/2011
	Victoria Manor I	121 Victoria Avenue South	2	30	24	5/31/2011
	Victoria Manor II	115 Victoria Avenue South	2	24	24	5/31/2011
	Avenue West Manor	70 West Avenue South	2	15	15	3/31/2012
	Bold Street Lodge	130-132 Bold Street Lodge	2	24	24	3/31/2012
	Denholm's Manor	144 Robinson Street	2	19	19	3/31/2012
	East avenue place	65 East Avenue South	2	16	16	3/31/2012
	Gradatim Retirement Home	145 Market Street	2	12	12	3/31/2012
	Greenhill Villa	2 Webber Avenue	2	9	9	3/31/2012
	Petrovich Residential Care	92 Wentworth Street South	2	14	14	3/31/2012
	St. Andrew's Lodging and Rest Home	100 Herkimer Street	2	20	20	3/31/2012
	Universal Retirement Home	46 West Avenue South	2	20	20	3/31/2012
	Homestead Christian Care	118 Wentworth Street South	2	25	25	5/31/2012
	Evergreen Manor	41 Cathcart Street	2	22	22	5/31/2014

	Sunrise Lodge	160-164 Park Street South	2	20	20	New Agreement, not returned
Ward 3						
9 agreements overdue	J&M Rest Home	849 Main St. E	3	14	14	5/31/2008
	Main East Rest Home	939 Main Street East	3	25	24	5/31/2008
3 new agreements not returned	Proctor Manor	81 Proctor Boulevard	3	23	23	5/31/2008
1 new operator agreement not issued	Rutherford Lodge	18 Rutherford Avenue	3	16	16	5/31/2008
	Sherman Manor	55 Sherman Avenue South	3	22	22	5/31/2008
	Stinson Manor	110/112 Stinson Street	3	24	24	5/31/2008
	White Oaks Manor	650 Main Street East	3	25	24	5/31/2008
	Jerelday Lodge	418 Main Street East	3	24	24	5/31/2011
	Northview Seniors Residence	19 Aikman Avenue	3	57	24	5/31/2011
	Adelaide Residence	7 Blake Street	3	40	24	3/31/2012
	Brock Lodge	949 King Street East	3	10	10	3/31/2012
	Burriss Lodge	28 Burriss Street	3	21	21	3/31/2012
	Dunsmure, The	44 Proctor Boulevard	3	6	6	3/31/2012
	Gage Park Lodge	995 Main Street East	3	9	9	3/31/2012
	Maple Crest Lodge	904 King Street E	3	22	22	3/31/2012
	Sunrise Manor	18 Victoria Avenue North	3	14	14	5/31/2013
	St. Francis Lodge	57 Proctor Boulevard	4	6	6	New Operator, agreement not issued
	Balsam Lodge	213/219/223 Balsam Avenue, South	3	23	23	New Agreement, not returned
	Salvi's Lodge	325 Wentworth Street	3	14	14	New Agreement, not returned
	St. Clair Lodge	75 St. Clair Avenue	3	10	10	New Agreement, not returned

Ward 4						
1 agreement overdue	Faith Care Villa	2129 King St. E	4	6	6	5/31/2011
1 new agreement not returned	Golden Age Retirement Home	1800 King St. E	4	15	5	3/31/2012
	Montgomery Lodge	1605 Main St. E	4	30	5	3/31/2012
	Queenston Manor Retirement Home	346 Queenston Road	4	10	5	3/31/2012
	St. Francis Lodge East	1622 King St. E.	3	17	17	3/31/2012
	Anka Rest Home	43 London Street North	4	20	20	New Agreement, not returned
Ward 7						
1 agreement overdue	Edgemount Manor	483 Concession Street	7	24	24	5/31/2011
Ward 9						
1 agreement overdue	Sunnyside Lodge	11 Lake Avenue Drive	9	10	10	5/31/2008
Ward 13						
2 agreements overdue	Elm Villa Retirement Home	12 Melville Street	13	24	24	5/31/2008
	Laburnum Lodge	53 Park Street	13	16	12	5/31/2008
	Governor's Manor	37 Ogilvie Street	13	16	16	3/31/2012
Ward 15						
No agreements overdue	Dromore Senior Services	408 Rock Chapel Road	15	10	5	5/31/2012
	Waterdown Manor	335 Dundas Street East	15	69	24	3/31/2012