



Service Agreement

This Agreement effective this ____ day of _____, 2022

BETWEEN:

The Corporation of the County of Bruce
(the "County")

-and-

(the "Operator")

WHEREAS:

- A. The Corporation of the County of Bruce ("County") is a service system manager pursuant to the *Child Care and Early Years Act, 2014*, S.O. 2014, Chapter 11, Schedule 1 ("CCEYA");
- B. Pursuant to the CCEYA, the County administers delivery of financial assistance provided by the Ministry of Education and the County with respect to licensed child care services and authorized recreational programs within its geographical area; and
- C. The Operator agrees to provide child care services and/or authorized camps, recreational and skill building programs as defined in the CCEYA and the Schedules attached hereto within the County's geographical area in accordance with the terms and conditions outlined in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

1. Recitals

- 1.1 The Parties hereby acknowledge and declare that the foregoing recitals are true and correct in substance and in fact, and form part of this Agreement.

2. Schedules

2.1 The following Schedules shall form part of this Agreement, and the Operator acknowledges that the Schedules are subject to amendments by the County from time to time without the Operator's consent:

Schedule A - Fee Subsidy
 Schedule B - Wage Enhancement Grant
 Schedule C - General Operating Grant
 Schedule D - Recreation
 Schedule E - Pay Equity
 Schedule F - Enhanced Program Staff
 Schedule G - Small Water Works
 Schedule H - Special Purpose Funding
 Schedule I - Fee Stabilization Support Funding
 Schedule J - Canada Wide Early Learning and Child Care Funding

3. Definitions

3.1 In this agreement:

- a. "Agreement" means this Agreement and the Schedules attached hereto and amended from time to time.
- b. "Applicable Law" means all mandatory laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licences, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers of governments, Canadian, provincial, municipal (both lower tier and upper tier municipalities), ordinary or extraordinary which now or at any time hereafter may be applicable to and enforceable against the Operator with respect to this Agreement, the Services referred to herein, the premises out of which the Services are being provided or any part thereof including, but not limited to, the following laws:
 - i. *Occupational Health and Safety Act*, RSO 1990, c. O.1;
 - ii. *Ontario Human Rights Code*, RSO 1990, c.H.19;
 - iii. *Pay Equity Act*, RSO 1990, c.P.7;
 - iv. *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c.16;
 - v. *Accessibility for Ontarians with Disabilities Act*, 2005, SO 2005, c 11;
 - vi. *Child Care and Early Years Act*, 2014, S.O. 2014, Chapter 11, Schedule 1;
 - vii. *MIFFPA*; and

viii. *Freedom of Information and Protection of Privacy Act*, RSO 1990, c.F.31.

- c. "Child" means a person who is younger than 13 years old.
- d. "CCEYA" means the *Child Care and Early Years Act, 2014*, S.O. 2014, Chapter 11, Schedule 1, and regulations, as amended, or any successor legislation thereto.
- e. "Claims" means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature or any kind whatsoever.
- f. "County Staff" means staff of The Corporation of the County of Bruce authorized to exercise the rights and perform the duties under this Agreement.
- g. "Fees" means the daily fee, as calculated by the County, that a parent is required to pay to the Operator.
- h. "Minister" means the Ministry of Education for the Province of Ontario or any successor ministry, department, or government body.
- i. "MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, or any successor legislation thereto.
- j. "Notice" has the meaning given to it in Article 17 of this Agreement.
- k. "Operator" means a person who has control or management of a premises, agency, program or service, and "operate" has a corresponding meaning.
- l. "Parent" includes a person having lawful custody of a child or a person who has demonstrated a settled intention to treat a child as a child of his or her family.

4. Services

- 4.1 The Operator agrees to provide child care services and/or authorized camps, recreational and skill building programs as defined in the CCEYA within the County's geographical area in accordance with the terms and conditions outlined in this Agreement and as further described in the Schedules attached hereto as amended from time to time ("**Services**").

4.2 With respect to the Services, the Operator agrees to:

- a. To provide Services that are high-quality, inclusive, accessible, and affordable;
- b. To comply with any recommendations provided by the County with respect to the Services;
- c. To actively participate in County led initiatives related to quality, child development, inclusion, and sector training and education.
- d. To use a centralized web enabled registration and application solution for licensed childcare, if required by the County; and
- e. To follow all policies and procedures outlined in the Child Care Operator Handbook, and in the Funding and Reconciliation Schedules and Tools.
- f. To operate in accordance with the Child Care and Early Years Act, 2014 (CCEYA) and its regulations; and
- g. To maintain their license in good standing in accordance with the CCEYA.

5. Term and Termination

5.1 **Term.** This Agreement is effective from date first written above and ends five (5) years from such date, after which time it may be renewed by mutual written agreement by both Parties (the "**Term**"). Except as otherwise provided, this Agreement shall expire five (5) year from the date first written above.

5.2 **Early Termination.** This Agreement may be terminated by either Party at any time prior to that set out under Paragraph 5.1 above upon sixty (60) days written notice to the other Party in accordance with Article 17 - Notice.

5.3 **Immediate Termination.** This Agreement shall be terminated immediately by the County on written notice to the Operator if:

- a. the Operator has become insolvent, files for bankruptcy, or assigns the benefits of this Agreement without approval from the County;
- b. the Operator has materially breached its obligations under this Agreement;
- c. the Operator has failed to comply with Applicable Law, provided that the County may, at its sole discretion, provide the Operator with an opportunity to cure a minor breach of Applicable Law; or
- d. the Operator's licence issued under the CCEYA has been revoked by the Ministry.

- 5.4 In the event that this Agreement is terminated under paragraph 5.2, the Operator shall provide only those Services which the Director determines are reasonably required to complete the Service in progress and shall forthwith refund the County any and all monies advanced by the County to the Operator that the Operator has not expended in accordance with the attached Schedules, or the terms of this Agreement. If the Agreement is terminated in part, all obligations with respect to the provision of all other Services continue in full force and effect.

6. Program Reports and Service Records

- 6.1 The Operator will maintain and submit to the County records respecting each site where Services are being provided and will prepare reports to be submitted to the County, as required by the County. The reports may include program data, such as statistics in target achievements as well as other financial information, as required by the County from time to time.
- 6.2 The Operator will also prepare and submit to the County, as required by the County, program reports acceptable to the County respecting the Services being provided.
- 6.3 The Operator will keep all records of reports for a minimum of seven (7) years. In the event the Operator ceases operation, it is agreed that the Operator will not dispose of any records related to the Services provided for under this Agreement without the prior written consent of the County.

7. Financial and Accounting Records

- 7.1 The Operator will maintain detailed financial and accounting records with respect to the Services provided pursuant to this Agreement for each site where Services are being provided and will allow County Staff, or such other persons as may be appointed by the County from time to time, to inspect and audit such financial and accounting records at all reasonable times both during the term of this Agreement or the early termination thereof and for a reasonable period thereafter.
- 7.2 The Operator will provide the County with year-end audited financial statements to verify that the funding provided was used for the purpose(s) intended.
- 7.3 The Operator will provide all financial and other information based on the County's reporting requirements and timelines.

- 7.4 The County has the right to follow up with the Operator on expenditures reported to determine reasonability of variances and/or eligibility of expenditure.
- 7.5 The cost of any financial or operational audit or review required or conducted by the County will be borne by the Operator if the audit or review (i) was made necessary because the Operator did not comply with a requirement under this Agreement; or (ii) the County determines that the Operator has not fulfilled its obligations under this Agreement.
- 7.6 The County has the right to take reasonable and progressive corrective actions if the Operator does not comply with reporting requirements.
- 7.7 The County has the right to withhold and recover funding based on the following:
- a. Funding spent on ineligible expenditures;
 - b. Operator not meeting deadlines related to request for information, documentation, or reporting;
 - c. Operator not meeting the funding requirements outlined in applicable Schedules, and guidelines;
 - d. Funding not used in accordance with the requirements outlined applicable Schedules and guidelines; or
 - e. Expenditures not at fair market value.
- 7.8 Adjustments and recoveries of funding provided will be determined at the discretion of the County based on the County's reconciliation process.
- 7.9 The Operator will retain the financial and accounting records referred to in Paragraph 7.1 for a period of seven (7) years. In the event the Operator ceases operation, it is agreed that the Operator will not dispose of any financial and accounting records related to the Services provided for under this Agreement without the prior written consent of the County.
- 7.10 Notwithstanding anything to the contrary contained herein, the Operator shall adhere to and comply with any additional financial reporting requirements specified in the attached Schedules, as applicable.
- 7.11 The Operator will comply with the County's policies on the treatment of revenues and expenditures, as amended from time to time.

8. Disposition

- 8.1 The Operator will not sell, change the use, or otherwise dispose of any item, furnishing or equipment which exceeds a value of \$1,000.00 which was purchased with County funds pursuant to this Agreement without the prior written consent of the County, which may be given subject to such terms and conditions as the County deems advisable from time to time.

9. Municipal Access and Consultation

- 9.1 The Operator will permit County Staff to enter upon any premises on 48 hours prior written notice in connection with the provision of Services pursuant to this Agreement and under its control in order to observe and evaluate the Services provided pursuant to this Agreement.
- 9.2 The Operator agrees that its staff / employees providing Services pursuant to this Agreement will, upon reasonable request, be available for consultation with County Staff.

10. Compliance with Applicable Law

- 10.1 During the Term of this Agreement, the Operator, its officers, directors, shareholders, employees, agents and volunteers shall comply with Applicable Law.

11. Confidentiality

- 11.1 The Operator, its directors, officers, shareholders, employees, agents and volunteers will hold confidential and will not disclose or release to any person, other than County Staff at any time, during or following the term of this Agreement, except where required by law, any information or document that tends to identify any individual in receipt of Services without obtaining the written consent of the individual or the individual's parent or legal guardian prior to the release or disclosure of such information or document. Where the Operator is a municipality or other such "institution" as defined in MFFIPA, the provisions of such Act with respect to the disclosure or release of information shall apply.

12. Indemnification

- 12.1 The Operator shall indemnify and hold harmless the County, its elected officials, directors, councillors, officers, affiliates, agents, employees and permitted successors and assigns from and against all actions, Claims, demands, losses, costs, damages, suits or proceedings whatsoever which may

be brought against or made upon the County and against all losses, liabilities, judgments, claims, suits, demands or expenses which the County may sustain, suffer or be put to resulting from or arising out of any act or omission of the Operator, including but not limited to the Operator's failure to exercise reasonable care, skill or diligence or from any omission in the performance of this Agreement. This indemnification shall include any legal costs incurred by the County on a substantial indemnity basis, including those incurred to defend any criminal prosecutions against the County resulting from the actions of the Operator. This indemnification shall specifically survive the termination of this Agreement.

13. Insurance

- 13.1 Without restricting the generality of the requirement to indemnify the County, the Operator shall obtain, maintain, pay for and provide evidence of insurance coverage, taken out with insurance companies licensed to transact business in the Province of Ontario, which shall include the following:
- a. Commercial General Liability ("CGL") insurance which includes the County as an Additional Insured and/or Named Insured, with limits of not less than five million dollars (\$5,000,000.00) inclusive per occurrence for bodily and personal injury, death and damage to property including loss of use. The CGL insurance will include Cross Liability and Severability of Interest Clauses, Products and Completed Operations coverage (twelve (12) months), and limits of not less than one million (\$1,000,000.00) Standard Non-Owned Automobile Liability.
 - b. Automobile Liability Insurance in respect of licensed vehicles must have limits of not less than two million dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property. Coverage shall be in the form of a standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned and/or leased or operated by or on behalf of the Operator.
 - c. Professional Liability Insurance coverage must have limits of not less than two million dollars (\$2,000,000.00) inclusive per claim, covering Registered Early Childhood Educator (RECE) services or activities that are professional in nature and excluded under the CGL policy.
 - d. Directors' & Officers' Liability Insurance for non-profit agencies with a Board of Directors, must have limits of not less than one million dollars (\$1,000,000) per claim.

- e. Abuse Liability Insurance coverage must have limits of not less than five million dollars (\$5,000,000) inclusive per claim covering acts that are excluded from the Professional Liability Insurance including but not limited to discrimination and harassment (including gender, race, age, religion, sexuality, disability, etc.); bullying or mental abuse; physical violence or corporal punishment; sexual abuse and molestation; coercion; negligence (either related to working practices or failure to report abuse); failure to efficiently screen individuals placed in positions of authority.
- 13.2 The County will accept in place of the above-mentioned insurance coverage, a combination of primary liability limits and umbrella insurance or excess liability limits which meet the CGL and/or Automobile Liability coverage limits noted above.
- 13.3 The insurance policy shall provide that it cannot be cancelled, lapse, or be materially changed without at least thirty (30) days' notice to the County by registered mail. Evidence of this insurance satisfactory to the County shall be provided by the Operator prior to the execution of this Agreement, and annually thereafter.

14. Compensation

- 14.1 The County will reimburse the Operator for eligible expenditures incurred pursuant to this Agreement. The County reserves the right, at its sole discretion, to determine the amounts, times and manner of such payment(s).
- 14.2 It is agreed and understood that the County may withhold payments if the Operator is in breach of its obligations under this Agreement.
- 14.3 The Operator shall hold any funds advanced to the Operator by the County in trust for the County until such time as the funds are expended in accordance with this Agreement.
- 14.4 The Operator shall provide to the County copies of receipts for all eligible expenditures incurred pursuant to this Agreement.

15. Conflict of Interest

- 15.1 The Operator, its agents, representatives, and any of their respective directors, officers, employees, agents and volunteers shall not engage in any activity or provide any Services, where such activity or Services create a conflict of interest (actually or potentially in the sole opinion of the County) to the Services provided pursuant to this Agreement. The Operator acknowledges

and agrees that it shall be a conflict of interest for it to use confidential information of the County relevant to the Services where the County has not specifically authorized such use.

- 15.2 The Operator shall disclose to the County without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 15.3 A breach of the provisions of this Article 13 by the Operator shall entitle the County to terminate this Agreement, in addition to any other remedies that the County may have in law or in equity.

16. Payments and Overpayments

- 16.1 Any payments by the County under this Agreement shall be conditional on the following:
- a. The Operator continuing operations of the Services, holding a valid licence issued under the CCEYA and evidence of continuing compliance with its requirements;
 - b. Compliance with all applicable funding guidelines and policies, including without limitation, signing attestations confirming that funds are used for the intended in accordance with Ministry and County funding management guidelines;
 - c. Compliance with Applicable Law;
 - d. Compliance with any other terms or conditions in this Agreement; and
 - e. The Province of Ontario's continued funding of the payments to be made by the County pursuant to this Agreement.
- 16.2 The County may amend any amounts payable under this Agreement by providing the Operator with thirty (30) days' written notice of such change in payment amounts. Upon receipt of the notice, the Operator hereby consents to the County amending the applicable Schedule to this Agreement to reflect the change in payment amounts, as set out in the written notice. Any such amendment to the Schedule and the payment amounts shall be deemed to take effect 30 days from the date the notice was deemed served in accordance with Article 17 – Notice herein.

- 16.3 The Operator agrees that any errors or omissions with respect to payments made under this Agreement must be reconciled within ninety (90) days of receipt of the payment by the Operator.
- 16.4 The County reserves among all other rights and remedies available to it at law or equity, the right to recover payment in part or in full should the Operator breach its obligations under this Agreement.
- 16.5 The Operator shall immediately refund any payments made by the County to the Operator in excess of the amounts indicated in this Agreement or any funds not used in accordance with this Agreement, or in the event that the Operator fails to provide the required documentation.
- 16.6 The parties further acknowledge and agree that the funding of Services under this Agreement in no way obligates the County to continue to fund the Services or similar services from the Operator after the expiry of the Term or earlier termination of this Agreement.

17. Independent Contractor

- 17.1 The County and the Operator shall not be deemed to be carrying on a partnership relating to the delivery of Services pursuant to this Agreement. The Operator is an independent contractor and no agency, partnership or employer-employee relationship is intended or created by this Agreement.

18. Dispute Resolution

- 18.1 **Negotiation.** The County and the Operator shall endeavour to resolve any dispute which may arise between them with respect to this Agreement by negotiation. The Parties hereby agree to negotiate, promptly and in good faith, any matter a party may wish to negotiate.
- 18.2 **Arbitration.** If in the opinion of the County or the Operator, acting reasonably, it is unlikely to expect the matter in dispute as between the Parties to be resolved by continued negotiations or continued mediation, or if the matter is of such a significant nature to warrant it being addressed otherwise, then it is to be submitted to binding arbitration pursuant to the Arbitration Act (Ontario), as amended. The sole arbitrator shall be appointed by agreement between the Parties or, in default of agreement, such arbitrator shall be appointed by a judge of the Superior Court of Justice. The binding arbitration shall be held in the Municipality of Brockton. The procedure to be followed shall be agreed by the Parties or, in default of agreement, determined by the arbitrator. The arbitrator shall have the power to proceed with the arbitration and to deliver his or her award notwithstanding the default by any Party in

respect of any procedural order made by the arbitrator. The cost of such arbitrator shall be borne in accordance with the decision of the arbitrator. The decision arrived at shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction.

19. Notice

- 19.1 Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally upon an officer of the party for whom it is intended, or couriered, or mailed by prepaid registered mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender, and in the case of:

(a) To the County, addressed to it at:

The Corporation of the County of Bruce
30 Park Street, PO Box 399
Walkerton, ON N0G 2V0
Attention: Director of Human Services
Fax:
Email:

(b) To the Operator, addressed to it at:

[INSERT ADDRESS HERE]

Attention:
Fax:
Email:

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if served personally, by telecopy or email, shall be deemed to be the date of delivery thereof, or if mailed as aforesaid, five (5) business days from mailing.

20. General

- 20.1 **Severability.** If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, that provision will, as to that jurisdiction, be ineffective only to

the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other parties or circumstances. The Parties shall engage in good faith negotiations to replace any provision which is so restricted, prohibited or unenforceable with an unrestricted and enforceable provision, the economic effect of which comes as close as possible to that of the restricted, prohibited or unenforceable provision which it replaces.

- 20.2 **Successors.** This Agreement is binding on, and enures to the benefit of, the Parties and their respective successors.
- 20.3 **Time of Essence.** Time is of the essence for this Agreement.
- 20.4 **Sections and Headings.** The division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- 20.5 **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties.
- 20.6 **Governing Law.** This Agreement is governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that province, excluding the choice of law rules of that province.
- 20.7 **Independent Legal Advice.** Each of the Parties acknowledges that it has read and understands the terms and conditions of this Agreement and acknowledges and agrees that it has had the opportunity to seek, and was not prevented or discouraged by any other party from seeking, any independent legal advice which it considered necessary before the execution and delivery of this Agreement and that, if it did not avail itself of that opportunity before signing this Agreement, it did so voluntarily without any undue pressure. A failure by a Party to obtain independent legal advice shall not be used by it as a defense to the enforcement of its obligations under this Agreement.
- 20.8 **Assignment.** Unless otherwise provided within this Agreement, the Operator will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the County. The County's approval may be withheld in its sole discretion or given subject to such conditions as the County may impose.

- 20.9 **Amendment.** This Agreement and its Schedules may be amended from time to time in accordance with paragraphs 2.1 or 14.2 or through an amendment made in writing and duly signed by the parties to this Agreement.
- 20.10 **Waiver.** The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.
- 20.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in legible form, including in a tagged image format file (TIFF) or portable document format (PDF), shall be equally effective as delivery of a manually executed counterpart of this Agreement.
- 20.12 **Designation.** The County and the Operator acknowledge and agree that the County may designate any individual who is County Staff to execute any of the Schedules attached to this Agreement on behalf of the County and that any such execution shall be complete and binding on both the Operator and the County.
- 20.13 **Further Assurances.** The Parties agree to execute such further documents and consents as required for the purposes that may affect the carrying out of this Agreement.
- 20.14 **Effective Date.** This Agreement is effective from the date it is signed by the County.

[Remainder of the page left intentionally blank. Signature page follows]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement under seal, as of the date first written above.

THE CORPORATION OF THE COUNTY
OF BRUCE

Per: _____

Per: _____

We have authority to bind the
Corporation

If the Operator is a Corporation:

Per: _____

Name:

Position:

I have authority to bind the corporation

If Individual:

Name:

Witness:

The undersigned confirms receipt of the Child Care Operator Handbook, Funding Schedule, and Funding Workbook.

Date:

Signature
