

**BY-LAW NUMBER #2019-024**

**Service Agreement**

**This Agreement made in triplicate this 2<sup>nd</sup> Day of May 2019.**

**B E T W E E N:**

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

**- and -**

**The Corporation of the Municipality of Arran-Elderslie  
(The "Operator")**

**WHEREAS** the County has the authority, pursuant to the *Child Care and Early Years Act*, to enter into this Agreement for the provision of childcare services;

**AND WHEREAS** the Operator agreed to provide child care services described in the attached Child Care Fee Subsidy Schedule; Provincial Wage Enhancement Schedule; General Operating Grant Schedule; Children's Recreation Program Schedule; Pay Equity Memorandum of Settlement Schedule; Enhanced Program Staff Schedule; Small Water Works Schedule; and Special Purpose Funding Schedule, as applicable, all in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this agreement, the parties agree as follows:

**1. Definitions**

In this Agreement:

- "Agreement" means this Agreement and the schedules attached hereto as at the date hereof and as amended from time to time.
- "Child" or "Children" means a child or children who receive child care services pursuant to this Agreement.
- "Child Care and Early Years Act" means the *Child Care and Early Years Act* and accompanying regulations, as amended, or any successor legislation thereto.
- "County Staff" means the staff of The Corporation of the County of Bruce authorized to exercise the rights and perform the duties under this Agreement.

- "Inclusive Child Care" means the provision of early learning and child care services to children identified as having special needs.
- "*Human Rights Code*" means the *Human Rights Code, R.S.O. 1990, c. H19*, as amended, or any successor legislation thereto.
- "Province" means the Ministry of Education for the Province of Ontario or any successor ministry, department or government body.
- "*Municipal Freedom of Information and Protection and Privacy Act*" 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.
- "Parent" means the person or persons who are the natural parents of a Child or the person or persons having legal custody or guardianship of a Child.
- "Parental Fees" means the daily fee, as calculated by the County, that the parent is required to pay to the Operator.

## **2. Provision of Service**

The Operator agrees:

- (a) to provide services in accordance with the following, as amended from time to time, (unless not applicable as indicated in this Agreement), to enable families in receipt of subsidy to attend the Operator's early learning and child care program:
  - (i) Child Care Fee Subsidy Schedule;
  - (ii) Children's Recreation Schedule.
- (b) to participate, in a meaningful way, in the County's quality assurance initiatives and working collaboratively with the Bruce Grey Quality Assurance Child Care Committee;
- (c) to provide Inclusive Child Care; and
- (d) to use as required by the County, a centralized web enabled registration and application solution for licensed child care at no additional cost to the Operator.

## **3. Term and Termination**

3.1 This Agreement shall commence on the April 18, 2019 and shall continue until terminated under Section 3.2 of this agreement.

- 3.2 (a) This Agreement shall be terminated immediately by giving written notice if,
- (i) the Operator has become insolvent, committed an act of

- bankruptcy, or purported to assign the benefit of this Agreement without approval from the County; or
- (ii) the County determines upon reasonable grounds that the Operator is in breach of the terms of this Agreement.

(b) This Agreement may be terminated immediately by the County at its discretion, if the Operator receives a Provisional License from the Ministry at any time during the term of this Agreement.

(c) Notwithstanding subsections (a) and (b) of this section, either party may terminate the whole or part of this Agreement by giving the other party sixty (60) days of notice in writing.

3.3 In the event that this Agreement is terminated under section 3.2, the Operator shall, during the notice period, provide only those services which the Director determines are reasonably required to complete the service in progress and shall forthwith refund to 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.

#### **4. Consideration**

(a) The County will pay to the Operator admissible expenditures incurred pursuant to this Agreement. The County reserves the right within reason to determine the amounts, times and manner of such payments.

(b) It is agreed and understood that the County of Bruce may withhold payments if the Operator is in breach of its obligations under this Agreement.

(c) 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.

#### **5. Municipal Access and Consultation**

(a) The Operator will permit County Staff to enter at reasonable times any premises used by the Operator 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.

(b) The Operator agrees that its staff providing services pursuant to this Agreement will, upon reasonable request, be available for consultation with County Staff.

## **6. Reports**

In addition to any other reporting provisions herein contained:

- (a) The Operator will maintain service records respecting each site where service is being provided and prepare and submit the required information as identified. Such reports may include program data such as statistics in target achievements and other financial information as the County requires.
- (b) The Operator will also prepare and submit to the County program reports acceptable to the County respecting the services being provided.

## **7. Financial Records and Reports**

- (a) The Operator will maintain financial records and books of account respecting services provided pursuant to this Agreement for each site where service is 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 books and records at all reasonable times both during the term of this Agreement and for a reasonable period subsequent to its expiration or termination.
- (b) 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) determines that the Operator has not fulfilled its obligations under this Agreement.
- (c) The Operator will be provided with three months of notice from the County if an audited financial statement with respect to the funding and services provided pursuant to this Agreement is required.
- (d) The Operator will retain the records and books of account referred to in subsection (b) for a period of seven (7) years.
- (e) The Operator will adhere to any additional financial reporting requirement specified in the attached Schedules, as applicable.
- (f) The Operator will comply with the County's policies on the treatment of revenues and expenditures, as amended from time to time.

## **8. Service Records**

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.

## **9. Confidentiality**

The Operator, its directors, officers, 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 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 the Municipal Freedom of Information and Protection of Privacy Act, the provisions of such Act with respect to the disclosure or release of information apply.

## **10. Conflict of Interest**

- 10.1 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 to the County where such activity or the provision of such services, creates a conflict of interest (actually or potentially in the sole opinion of the County), with the provision of services 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.
- 10.2 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.
- 10.3 A breach of the provisions of this Article 10 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.

## **11. Human Rights Code**

It is a condition of this Agreement and every Agreement entered into pursuant to the performance of this Agreement, that no right under section 5 of the Ontario Human Rights Code will be infringed. Breach of this condition is sufficient grounds for termination of this Agreement. Each Operator will design and implement a policy to ensure the workplace and any programs are non-biased, non-sexist and anti-racist. All Board Members, staff, volunteers and students will sign off on the policy on an annual basis.

## 12. **Indemnification**

The Operator, both during and following the end of the term of this Agreement, indemnify and hold harmless the County of Bruce, its officers, elected officials, servant, agents and employees from and against any and all liabilities, claims, demands, losses, expenses, costs, damages, actions, suits or other proceedings by whomsoever made, directly or indirectly arising out of this Agreement attributable to bodily injury, sickness, disease or death or to damage or destruction of tangible property caused by any acts or omissions of the Operator, its officers, agents, servants, employees, customers, volunteers, invitees or licensees, or occurring in the child care or on the premises or any part thereof and/or, as a result of activities under this Agreement including all services provided, purported to be provided or required to be provided by the Operator pursuant to this Agreement. This clause shall survive the termination of this Agreement.

## 13. **Insurance**

The Operator shall, at its expense, maintain and keep in force during the term of the Agreement:

- (a) Commercial General Liability Insurance satisfactory to the County including the following and underwritten by an insurer licensed to conduct business in the Province of Ontario.
  - i) A limit of liability of not less than \$5,000,000 per occurrence.
  - ii) The County shall be named as an additional insured.
  - iii) The policy shall contain a provision for cross liability in respect of the named insured.
  - iv) Non-owned automobile coverage with a limit of at least \$2,000,000 including contractual non-owned coverage.
  - v) Products and completed operation coverage (Broad Form), and with an aggregate limit of not less than \$5,000,000.
  - vi) Abuse Coverage for a limit of not less than \$2,000,000.
- (b) Automobile liability insurance for an amount not less than \$2,000,000 on forms meeting statutory requirements covering all licensed vehicles use in any manner in connection with the performance of the terms of this Agreement.

## 14. **Disposition**

The Operator will not sell, change the use, or otherwise dispose of any item, furnishing or equipment purchased with County funds pursuant to this Agreement without the prior written consent of the County, which may be given subject to such conditions, as the County deems advisable.

## 15. Amendments

This Agreement and its Schedules may be amended from time to time through an amendment made in writing and duly signed by the parties to this Agreement.

## 16. Non-Assignment and Change in Ownership

- 16.1 The Operator will not assign this Agreement, or any part thereof, without the prior written approval of the County, which approval may be withheld by the County in its sole discretion or given subject to such conditions as the County may impose.
- 16.2 For the purposes of this section, this Agreement shall be deemed to be assigned by the Operator: (a) upon the change in control of the Operator (as defined by the Business Corporations Act), if the Operator is a corporation; and (b) upon reorganization which results in a change in the effective control of the Operator, if the Operator is a partnership.

## 17. Schedules

All the terms of the Schedules attached hereto are incorporated into this Agreement except where they are inconsistent with this Agreement. This Agreement and the following Schedules embody the entire Agreement and supersede any other understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution and relating to the subject matter of this Agreement:

Schedule "A" – Child Care Fee Subsidy Schedule;  
Schedule "B" – Children's Recreation Schedule

## 18. Laws

The Operator agrees that the Operator and its employees and representatives, if any, shall at all times comply with any and all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders in respect of the performance of this Agreement, including but not limited to the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act*.

## 19. Waivers

Any waiver by the County of the strict compliance by the Operator with a term, covenant or condition in this agreement, or any indulgence granted by the County to the Operator is not considered to be a waiver of a subsequent default or breach by the Operator, nor entitle the Operator to a similar indulgence.

**20. Independent Contractor**

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 and the parties hereto agree that the Operator is an entirely independent contractor providing such services for the County pursuant to the terms and conditions of this Agreement.

**21. Overpayment**

If for any reason the Operator is overpaid under this Agreement, the County will deduct the amount of the overpayment from any future monies owing to the Operator or require the Operator to return the funds to the County by way of a cheque to the County or the Region will collect the overpayment from the Operator through a court of competent jurisdiction.

**22. Notice**

Any notice required pursuant to this Agreement shall be in writing and delivered to:

**In the Case of the County**

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

**In the Case of the OPERATOR**

The Corporation of the Municipality of  
Arran-Elderslie  
1925 Bruce Road 10, PO Box 70  
Chesley, ON N0G 1L0

Any notice given in accordance with this provision shall be deemed to have been received upon delivery, if delivered personally, or five (5) days after posting, if mailed by prepaid registered mail.

IN WITNESS WHEREOF the Parties hereto have affixed their respective corporate seals as attested to by the Signatures of the Signing Officers of the Municipality and Operator.



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.

SIGNED, SEALED AND DELIVERED ) THE CORPORATION OF THE COUNTY OF BRUCE  
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 ) Per: \_\_\_\_\_  
 ) Warden  
 )  
 )  
 ) Per: \_\_\_\_\_  
 ) Clerk  
 )  
 )  
 ) Per: \_\_\_\_\_  
 ) The Corporation of the Municipality of  
 ) Arran-Elderslie  
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 )  
 ) Per: \_\_\_\_\_  
 ) The Corporation of the Municipality of  
 ) Arran-Elderslie

Signed this 2<sup>nd</sup> Day of May 2019