

CHILD CARE SERVICES
COST APPORTIONMENT AND AGENCY AGREEMENT

AGREEMENT effective this 1st day of January, 2013.

B E T W E E N:

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

OF THE FIRST PART

- and -

THE CORPORATION OF THE COUNTY OF MIDDLESEX
(hereinafter called "the County")

OF THE SECOND PART

WHEREAS pursuant to the *Day Nurseries Act*, R.S.O. 1990, c. D.2 ("the Act"), and Ontario Regulation 137/99 to the *Day Nurseries Act*, the Province of Ontario designated the City as the delivery agent for the geographic area of the City of London and the County of Middlesex (the "Service Delivery Area") responsible for delivering funding, subsidies and administration of services as required by the Act in the Service Delivery Area;

AND WHEREAS subsection 7.5(1) of the Act provides that if a geographic area includes more than one municipality, the municipality's costs incurred under the Act shall be apportioned among the prescribed municipalities in accordance with the regulations;

AND WHEREAS subsection 68.5(1) of R.R.O 1990, Reg. 262, permits the municipalities set out in the designation of an Ontario Works geographic area or an Ontario Works proposed geographic area may enter into an agreement under which the municipalities' prescribed costs payable or to be payable under this Regulation are apportioned among the municipalities set out in the designation;

AND WHEREAS subsection 68.5(3) of R.R.O 1990, Reg. 262 provides that the cost apportionment agreement may be effective with respect to a period before it is made and, in that case, shall provide for a monetary reconciliation among the Parties;

AND WHEREAS subsection 2.2(6.1) of the Act permits a delivery agent to enter an agreement with regard to any matter relating to the delivery agent's powers and duties under this Act, subject to the restrictions or conditions in the designation as delivery agent;

AND WHEREAS subsection 2.2(6.2) of the Act permits the Council of the County to enter into an agreement with the City as delivery agent and, if it does so, the County has all of the powers and duties of the delivery agent that relate to the subject-matter of the agreement;

AND WHEREAS the City and the County entered into an agreement dated February 19, 2002 for the apportionment of costs for Child Care Services and that such agreement expired on December 31, 2004;

AND WHEREAS the City and the County desire to enter into an agreement for the apportionment of costs for delivering Child Care Services in the Service Delivery Area;

AND WHEREAS the City desires to enter into an agreement with the County with regard to the provision of assistance in that portion of the Service Delivery Area that comprises the geographic area of the County of Middlesex excluding the geographic area of the City of London;

AND WHEREAS, for the term of this Agreement, the Council of the County desires to enter into an agreement with the City as the agent of the City with regard to the matters set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the covenants and undertakings contained herein and the provision of other good and valuable consideration by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, **the County** and **the City** (hereinafter, collectively referred to as "the Parties") do hereby mutually covenant and agree as follows:

Recitals

1. The above recitals are true and are hereby incorporated into this Agreement by reference.

Definitions

2. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- (a) **“Agreement”** means this Agreement;
- (b) **“Business Day”** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (c) **“City Manager”** means the person appointed by the City to the position of the City Manager of the City or the person appointed by the City to any other title or position which will require such person to perform the same duties or functions as performed by the City Manager;
- (d) **“Communication”** means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party;
- (e) **“Costs”** means the costs as prescribed in the Act and the regulations;
- (f) **“County Administrator”** means the person appointed by the County to the position of the Chief Administrative Officer of the County of Middlesex or the person appointed by the County who is appointed to any other title or position which will require such person to perform the same duties or functions as performed by the Chief Administrative Officer;
- (g) **“Deemed Arbitration Date”** means December 31, 2017;
- (h) **“Designated Delivery Agent”** means the City as designated by the Province under the Act and Ontario Regulation 137/99;
- (i) **“Child Care Services”** means the programmes and services as described the *Day Nurseries Act*, R.S.O. 1990, c. D.2 and the regulations;
- (j) **“City’s Prescribed Costs”** means with respect to the geographic area of the City of London, that part of the Costs prescribed by the Act and the regulations as incurred by the City;
- (k) **“County’s Prescribed Costs”** means with respect to the geographic area of the County of Middlesex, that part of the Costs prescribed by the Act and the regulations as incurred by the County;
- (l) **“Negotiation Period”** means that period of January 1, 2017 to December 31, 2017;
- (m) **“Parties”** means the County and the City collectively and **“Party”** means one of them;
- (n) **“Prescribed Costs”** means the costs set out in section 68.4 of R.R.O 1990, Reg. 262 to the Act;
- (o) **“Province”** or **“Provincial”** means the Province of Ontario;
- (p) **“Provincial Payment”** means the amount paid by the Province to the Designated Delivery Agent as determined in accordance with the regulations for the Province’s share of the Costs incurred under the Act.

Term

3. This Agreement shall commence on the 1st day of January, 2013 and shall expire on December 31, 2017.

Apportionment of Costs

4. The Parties agree that the City's Prescribed Costs and the County's Prescribed Costs for the delivery of Child Care Services shall be apportioned as between the City and the County on the basis that the City and the County shall be each responsible for their respective Prescribed Costs as incurred by either of them.

5. The Parties further agree and acknowledge that no reconciliation is required for the period of January 1, 2005 to December 31, 2012.

County as agent for City

6. The Parties agree that during the term of this Agreement, the County shall be the agent of the City for the delivery of Child Care Services for the portion of the Service Delivery Area that comprises the geographic area of the County of Middlesex excluding the geographic area of the City of London. The Parties agree and acknowledge that regardless of this Agreement, the City is the Designated Delivery Agent for the Service Delivery Area.

7. The Parties agree that for the calendar year 2013 the City shall allocate to the County the sum of \$1,033,846.00, which sum represents the allocation determined by the City as the portion of the annual Provincial Payment for the County's Prescribed Costs (the "Base Allocation") in addition to any Provincial Payment as expressly directed by the Province. The Parties further agree that for the calendar years 2014 to 2017 inclusive, the City shall adjust the Base Allocation annually to reflect the County's proportional share of any increase or decrease that the Province makes to the Provincial Payment.

8. The Parties agree that for the calendar years 2014 to 2017, the City shall consult with the County and its providers in the development of an annual service plan to establish the service delivery priorities, strategies, processes and procedures (the "Annual Service Plan") by which the County, as agent for the City, shall deliver the Child Care Services in the geographic area of the County not including the geographic area of the City. The Parties further agree that the Base Allocation may be adjusted by the City, as it determines necessary, to respond to the Annual Service Plan.

9. The Parties agree that during the term of this Agreement, an annual reconciliation of the Provincial Payment for the previous year shall be made by the City to reflect the total County's Prescribed Costs actually incurred by the County during each calendar year of this Agreement. The Parties further agree that the annual reconciliation shall be made by the City before the month of July of each year in this Agreement and any necessary reconciliation payments shall be paid accordingly.

10. The Parties agree that, for the term of this Agreement, the County shall take all necessary steps to provide the Child Care Services in the geographic area of the County of Middlesex excluding the geographic area of the City of London, in accordance with the standards prescribed by the Act and its regulations. The Parties further agree that the County shall deliver to the City on a quarterly basis all information and/or documentation required by the City, as the Designated Delivery Agent, to fulfil its duties and obligations to the Province.

Administrative Review

11. The Parties agree that the County and the City hereby establish an administrative joint management body for the sole purpose of providing administrative review of Child Care Services in the Service Delivery Area, hereinafter referred to as the Management Oversight Committee (the "MOC"). The Parties further agree that the MOC is not a decision-making body or a delivery agent as designated by the Act. The MOC shall be composed of the following persons:

- (a) the County Administrator (or delegate);
- (b) the City Manager (or delegate);
- (c) up to three (3) representatives from the City; and
- (d) up to three (3) representatives from the County.

12. The MOC shall:
- (a) establish its own procedures and meeting schedules during the term of this Agreement;
 - (b) review issues related to the delivery of Child Care Services including:
 - (i) reviewing operating funding and funding for extraordinary expenses;
 - (ii) reviewing Provincial standards and requirements; and
 - (iii) reviewing administrative policies;
 - (c) report, if necessary and as required, to the County Administrator and the City Manager details and particulars in relation to the administration of Child Care Services;
 - (d) exchange information relevant to the administration of Child Care Services, as requested by either Party from time to time; and
 - (e) report to the respective Councils for both the City and the County from time to time as considered by either Party to be appropriate or necessary.

Dispute Resolution other than Costs Apportionment

13. During the term of this Agreement, in the event that a dispute arises in connection with the administration of this Agreement, the Parties agree that:
- (a) the dispute shall be referred in writing by the party raising the dispute to the MOC where the Parties agree to negotiate in good faith for resolution to the dispute;
 - (b) if the dispute is not settled by the Parties at the MOC, the dispute shall be referred to the City/County Liaison Committee (the "CCLC") for its consideration of the dispute and possible recommendation of a resolution to the Municipal Council of the City and the County Council of the County;
 - (c) if the CCLC is unable to make a recommendation to the Municipal Council of the City and the County Council of the County, the dispute shall be referred to arbitration conducted in accordance with the provisions of the *Arbitration Act*, R.S.O. 1990, c.A.24, or any successor legislation. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom.

Amendment of Agreement

14. The Parties agree that this Agreement shall not be amended or altered without the consent of both Parties in writing as authorized by the Municipal Council for the City and the County Council for the County.

15. If either the City or the County is in good faith delayed or hindered in or prevented from performance of this Agreement by virtue of a change in provincial legislation, regulations or a change in provincial policy, then performance of this Agreement shall be excused for the period of time that the change in legislation, regulations or policy render it impossible to comply with the terms, covenants or provisions of this Agreement.

Negotiation of New Cost Apportionment Agreement prior to Arbitration

16. The Parties agree to negotiate a costs apportionment agreement prior to the Deemed Arbitration Date, pursuant to this section.

17. The Parties agree that during the Negotiation Period the Parties shall negotiate in good faith a further agreement for the apportionment of costs of Child Care Services, as follows:

- (a) Between January 1, 2017 and March 31, 2017 the County Administrator and the City Manager shall report to the CCLC for its consideration of any issues related to the renewal of this Agreement or the apportionment of the Costs of Child Care Services and the CCLC shall forthwith report to the County Council and Municipal Council accordingly;
- (b) In the event a new Child Care Services Costs apportionment agreement is not approved by the respective Councils of both Parties prior to April 1, 2017, the Parties shall attempt to negotiate a Child Care Services Cost Apportionment Agreement through without prejudice negotiations conducted by the respective Administrations of the Parties,

subject to approval of a new Child Care Services Cost Apportionment Agreement by each of the respective Councils of the County and the City;

- (c) In the event that the aforementioned negotiations do not lead to Council resolutions from each of the County and the City approving a new Child Care Services Costs apportionment agreement by June 1, 2017, the Parties shall agree to a mediation, the mediator to be appointed by the Parties by July 1, 2017 and the entire mediation to be completed by November 1, 2017; and
- (d) In the event that the above-noted mediation is conducted but does not lead to Council resolutions from the County and the City approving a new Child Care Services Costs apportionment agreement by December 31, 2017, the Parties shall enter into an arbitration as provided for in this Agreement.

Arbitration

18. If the Parties are unable to resolve the issue of apportionment of costs for Child Care Services in accordance with this Agreement, the Parties agree that an arbitration is governed by the *Arbitration Act, 1991*, and is subject to the following:

- (a) The Parties may jointly appoint a single arbitrator on or after the day the arbitration is commenced;
- (b) If the Parties are entitled to appoint an arbitrator jointly but have not done so, the Ontario Superior Court of Justice may make the appointment on a party's application under section 10 of the *Arbitration Act, 1991*;
- (c) The arbitrator shall make a final award that disposes of the issue, within three months after being appointed;
- (d) The Parties agree not to seek an order from the court to extend the date by which the arbitrator shall make his award, despite section 39 of the *Arbitration Act, 1991*. However, the said date may be extended by mutual agreement between the Parties;
- (e) The final award shall apportion among the Parties the costs associated with the provision of Child Care Services in the Service Delivery Area;
- (f) The arbitration shall not deal with costs associated with the provision of Child Care Services incurred before the designation date;
- (g) The final award may be effective with respect to a period before it is made and, in that case, shall provide for a monetary reconciliation among the Parties;
- (h) A Party may appeal the final award to the Ontario Superior Court of Justice only on a question of law, with leave, which the court shall grant only if it is satisfied that the conditions in clauses 45 (1) (a) and (b) of the *Arbitration Act, 1991* are met. No appeal lies on a question of fact or of mixed law and fact;
- (i) The arbitrator shall provide a copy of the final award to the Minister forthwith after it is made;
- (j) At any time during the arbitration, the Parties may enter into an agreement that includes an agreement apportioning the costs of the arbitration among the Parties, in which case the arbitration terminates;
- (k) The Parties may, at any time, amend the final award by agreement or replace the award with an agreement; and
- (l) The Parties shall bear their own costs in connection with this arbitration process.

19. The Parties agree and acknowledge that an arbitration for the determination of the apportionment of the costs associated with the provision of Child Care Services, may be consolidated with one or more arbitrations commenced by either party for the determination of the apportionment of costs for land ambulance, housing services and/or Ontario Works Services, or such other consolidated management service as the Parties may agree.

Notices

20. Any Communication shall be in writing and may be delivered:
- (a) personally or by courier;
 - (b) by prepaid registered mail; or
 - (c) by facsimile; or
 - (d) by e-mail or equivalent electronic means of transmission, if a hard copy of the Communication is delivered by one of the methods of delivery referred to above.
21. Any Communication shall be delivered to the persons and address as follows:

to the County at:

The Corporation of the County of Middlesex
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1
Attention: Chief Administrative Officer
Tel. No.: (519) 434-7321 x2249
Facsimile No.: (519) 434-0638
E-mail: cao@mdlsx.ca

with a copy to:

The Corporation of the County of Middlesex
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1
Attention: County Clerk
Tel. No.: (519) 434-7321 x2250
Facsimile No.: (519) 434-0638
E-mail: kbunting@middlesex.ca

to the City at:

The Corporation of the City of London
300 Dufferin Ave, P.O. Box 5035
London, Ontario N6A 4L9
Attention: City Manager
Tel. No.: 519-661-2500 x1804
Facsimile No.: 519-661-5813
E-mail: azuidema@london.ca

with a copy to:

The Corporation of the City of London
300 Dufferin Ave, P.O. Box 5035
London, Ontario N6A 4L9
Attention: City Clerk
Tel. No.: 519 661-2500 x4937
Facsimile No.: 519 661-4892
E-mail: csaunder@london.ca

or to any other address as any Party may at any time advise the other by Communication given or made in accordance with this section.

22. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 4pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

Further Assurances

23. The Parties hereto at all times warrant that they shall do, execute, acknowledge, deliver and/or cause to be done such other acts, agreements and other documents as may be reasonably required or desirable to give effect to the terms of this Agreement.

Amendment and Waiver

24. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

Enurement

25. This Agreement enures to the benefit of and is binding upon the Parties.

Assignment

26. Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party without the prior written consent of the other Parties.

Covenants

27. All obligations contained in this Agreement, even if not expressed to be covenants, shall be deemed to be covenants.

Entire Agreement

28. This Agreement constitutes the entire agreement between the Parties pertaining to Child Care Services and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. The Parties acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and that no Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect.

General Provisions

29. The Parties agree that:

- (a) words importing the singular only shall include the plural;
- (b) words importing the masculine only shall include the female;
- (c) words importing a person shall include a corporation;
- (d) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (e) all references to any statute, regulation or by-law or any provision thereof includes such statute, regulation or by-law or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute, regulation or by-law thereto; and
- (f) whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

Counterparts

30. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original and those counterparts will together constitute one and the same instrument.

Severability

31. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:

- (a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
- (b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

Governing Law

32. This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties have hereunto set their hands and seals this on the date(s) noted below and agree that this Agreement shall be effective on the date set out at the top of page one (1) of this Agreement.

Date: _____, 2013

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Brad Richards, Warden

Kathy Bunting, County Clerk

Date: _____, 2013

THE CORPORATION OF THE CITY OF LONDON

Joe Fontana, Mayor

Catharine Saunders, City Clerk