

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
between:

## **The Corporation of the County of Grey**

a municipality within the meaning of the Municipal Act, 2001  
(hereinafter referred to in this Agreement as “the County”),

-And-

## **Bluewater District School Board**

(hereinafter referred to in this Agreement as “the Board”);

WHEREAS the County, as delivery agent under the Day Nurseries Act, R.S.O. 1990, c.D. 2, as amended, its regulations and any successor legislation thereto (collectively the “Act”) may enter into agreements pursuant to the Act for any matter related to its powers and duties under the Act;

AND WHEREAS the County provides and assists in the provision of Day Nursery Services (as hereinafter defined) within its geographical area pursuant to the Act, including at certain Premises (as hereinafter defined) which is owned by the Bluewater District School Board, and which is going to undergo a retrofit in 2015;

AND WHEREAS the Board requires funding assistance to pay for the capital costs of the retrofit Project (as hereinafter defined) described in Schedule “A” annexed hereto;

AND WHEREAS, pursuant to Grey County resolution SSC58-14, the County wishes to assist the Board with funding for the Project;

NOW THEREFORE in consideration of the mutual covenants and agreements set out below and other good and valuable consideration (the receipt and sufficiency of all of which is hereby acknowledged by the parties), the parties covenant and agree with one another as follows:

## **1.0 Definitions**

### **1.1 In this Agreement:**

- a) “Accommodation Review Committee” or “ARC” means a committee which is appointed by the Board to assume an advisory role and, based on research, provide recommendations that will inform the final decisions made by the Board with respect to school closures.
- b) “Act” means the *Day Nurseries Act*, R.S.O. 1990, c.D. 2, as amended, its regulations and successor legislation thereto;
- c) “Agreement” means this agreement as same may be amended from time to time pursuant to its provisions;
- d) “County Funding” means the amount of funding which the County will provide to the Board for Project Costs under this Agreement. The amount is outlined in Schedule “A”.
- e) “Consultant” means the person or entity identified in Construction Contracts entered into for the Project. The Consultant is the Architect, the Engineer or entity licensed to practice in the province of Ontario. The term Consultant means the Consultant or the Consultant’s authorized representative.
- f) “Day Nursery” means a day nursery as defined in the Act, and “Daycare Centre” also has the corresponding meaning;

- g) “Day Nursery Services” means the services required in the operation of a Day Nursery;
- h) “Laws and Regulations” means any and all applicable federal, provincial, regional, municipal or local laws, by-laws, codes, regulations, ordinances, rules, statutes and orders in existence on the date of execution of this Agreement or coming into existence during the Term of this Agreement and any amendments thereto;
- i) “Ministry” means the Ministry of Education for the Child Care Modernization Act and any successor ministry thereto;
- j) “Premises” means the Dundalk & Proton Community School located at 251 Young Street, Dundalk in the Township of Southgate, Ontario;
- k) “Project” means either the construction and/or renovations to repurpose existing teaching spaces into independent daycare spaces within the Premises;
- l) “Project Costs” means the following costs, which are required to complete the Project including:
  - i) fees and disbursements incurred for architects;
  - ii) costs associated with any approvals required to complete the Project including all site application and permit fees;
  - iii) all construction costs including addition of windows in doors, construction of washrooms, plumbing hookup, storage room/office area, walkway from classroom to storage/office;
  - iv) all payments to contractors for labour, materials, supplies and services;
- m) “Schools-First Child Care Capital Retrofit Policy” means the initiative defined in Memorandum **2012: EL4** issued by the Ministry of Education Early Learning Division dated November 8, 2012.

## 2.0 Term

- 2.1 This Agreement shall be effective as of the date of execution and remain in effect until August 31, 2020, unless terminated by either party according to Section 8.0 of this Agreement.

## 3.0 Responsibilities of the Board

- 3.1 The Board shall be responsible for the following, under this Agreement:

- a) Use the County Funding explicitly for Project Costs.
- b) The Board will retrofit existing space within the Premises to accommodate a Day Nursery as per Schedule ‘B’, as outlined in the Schools-First Child Care Capital Retrofit Policy.
- c) The Board will ensure the Project and Premises complies with all relevant health and safety regulations and requirements as per the appropriate oversight agencies at the time of initial construction (including but not limited to the Grey Bruce Public Health Unit, Food and Rural Affairs, the Ministry of Labour and the Canadian Food inspection Agency) as they relate to facility requirements.
- d) Share Project progress reports with the County.

- e) Upon completion of the Project, provide copies of any and all documentation from the design architect and various consultants, including mechanical, electrical, and structural, to the County certifying the Project completion.
- f) Ensure that financial reporting meets the requirements of the County Finance Department as outlined below:
  - i) The Board will provide electronic copies, in PDF format, of all payment certificates issued by the Consultant for the Project and authorized for payment by the Board.
  - ii) The Board will provide a copy of the Certificate of Substantial Performance as issued by the Consultant upon completion of the Project. The completion of the Project is to be as defined by the Construction Lien Act.
  - iii) The Board will prepare and submit to the County a final statement of accounts upon completion of the Project and release of the final payment to the general contractor.

## 4.0 Responsibilities of the County

- 4.1 Disburse County Funding in a timely manner according to payment schedule outlined in Schedule "A".

## 5.0 Financial Arrangements

- 5.1 The County Funding shall be disbursed by the County as per details outlined in Schedule "A".
- 5.2 If a further capital contribution is required to enable the Project to move forward to completion, the Board may approach the County to request further funding from the County. Such request shall be made no later than September 15, 2015. In doing so, the Board shall provide the appropriate financial information to the County for its consideration. The decision of whether to provide such further funding, and/or to what limit, shall be made at the sole and unfettered discretion of the County.
- 5.3 If, as a result of a request by the Board pursuant to section 5.2 the County agrees to provide further funding, a formal amendment to this Agreement will be necessary, pursuant to Section 13.0.
- 5.4 In the event of the cancellation of this Project prior to completion or identification of this Premises for closure by the Board's Accommodation Review Committee, or if at any time within five years from the date of completion of the project, the Board sells, leases, encumbers or otherwise disposes of, directly or indirectly, any asset constructed, rehabilitated or improved, in whole or in part, with the financial assistance contributed by the County, the Board must repay the County a proportional amount of the financial assistance pursuant to section 8.2 or 8.3, as applicable.
- 5.5 Unless otherwise agreed by the County, if the Day Nursery space within the Premises ceases to be used as a Day Nursery as contemplated in this Agreement prior to August 31, 2020, the County's financial assistance will be repaid by the Board as per the repayment schedule outlined under section 8.3 of this Agreement.

## 6.0 Liability and Indemnification

- 6.1 The County's officers, elected officials, employees and agents shall not be liable to the Board or any of the Board's officers, directors, trustees, personnel,

representatives, members, or agents for costs, losses, claims, liabilities and damages howsoever caused (including any incidental, indirect, special or consequential damages, injury or any loss of use or profit of the Premises) arising out of or in any way related to the Project or otherwise in connection with this Agreement.

6.2 The Board shall indemnify and hold harmless the County from and against all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project, the Premises, or otherwise in connection with this Agreement.

6.3 This section 6.0 shall survive the termination of this Agreement.

## 7.0 Insurance

7.1 The Board represents and warrants that it has and shall maintain for the entire Term of the Agreement, at its own cost and expense, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including but not limited to 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:

- a) A limit of liability of not less than \$5,000,000/occurrence;
- b) The County shall be named as an additional insured with respect to this Agreement;
- c) A provision for cross liability in respect of the named insured and severability of interests;
- d) contractual liability coverage;
- e) Products and completed operations coverage (Broad Form);
- f) That 30 days' prior Notice of an alteration or cancellation in policy terms which reduces coverage shall be given in writing to the County.

7.2 Broad Form Property Policy insuring against loss or damage to the Premises and its Contents in an amount not less than the full replacement cost. The policy shall name the County as additional insured party throughout the Term of this Agreement, and up until and including August 31, 2020.

7.3 Proof of insurance in the form of a certificate(s) of insurance shall be provided by the Board to the County upon execution of this Agreement and upon all policy renewal periods within the Term of this Agreement.

7.4 The Board will ensure that the County is named as an additional insured on the contractor's insurance policy during the construction period, and shall provide a proof of same in the form of a certificate of insurance provided to it by the contractor.

## 8.0 Termination

8.1 Either party may terminate this Agreement upon giving to the other 90 days' written notice of intention to terminate.

8.2 If the Project is cancelled prior to completion by the Board, the Agreement shall therefore be terminated. In such case, the Board shall be responsible to pay back to the County one hundred percent (100%) of County Funding received under this Agreement. If the Project is cancelled at the request or direction of the County prior to completion or prior to the full term of the Agreement, the

Agreement shall therefore be terminated and no funding will be returned to the County from the Board.

- 8.3 Should the Premises be identified for closure by the Board's Accommodation Review Committee, and where the existing Child Care Centre located within the premises cannot be accommodated through the Replacement School Policy (Memorandum 2013: B8 – April 15, 2013), the Board shall be responsible to pay back to the County the County Funding according to the following schedule:

Between Sept. 2015 – August 31, 2016: 100% of County Funding shall be repayable

Between Sept. 2016 – August 31, 2017: 67% of County Funding shall be repayable

Between Sept. 2017 – August 31, 2018: 33% of County funding shall be repayable

After August 31, 2018, no amount shall be repayable to the County under this agreement.

- 8.4 The County may terminate this Agreement without notice in the event of a substantial breach of any provision herein by the Board. In the event of such a termination, the County, at its sole discretion, may require full repayment of the funding it has provided to the Board under this Agreement.

## 9.0 Notice

- 9.1 Any notice required to be given, served or delivered must be in writing and sent to the other party at the address indicated below, or to such other address as may be designated by notice provided by either party to the other.

For the County:

County Clerk  
County of Grey Administration Building  
595 9<sup>th</sup> Ave E  
Owen Sound, ON N4K 3E3  
Fax Number: 519-376-8998  
Email: [countyclerk@grey.ca](mailto:countyclerk@grey.ca)

For the Board:

Superintendent of Business Services  
Bluewater District School Board  
351 1st Ave. N.  
Chesley, Ontario N0G 1L0  
Email: [rob\\_cummings@bwdsb.on.ca](mailto:rob_cummings@bwdsb.on.ca)

- 9.2 Any notice to be given by either party to the other shall, in the absence of proof to the contrary, be deemed to have been received by the addressee if:
- delivered personally on a business day, then on the day of delivery;
  - sent by prepaid registered post, then on the second day following the registration thereof;
  - sent by ordinary mail, then on the fifth business day following the date on which it was mailed; or
  - sent by facsimile or email, upon confirmation of successful transmission of the notice.

## 10.0 Governing Law

10.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

## 11.0 Severability

11.1 Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

## 12.0 Entire Agreement

12.1 This Agreement constitutes the entire agreement between the parties with respect to the Project, the County Funding, and the Premises and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the Project, the County Funding, and the Premises except as provided in this Agreement and the attached Schedule(s).

## 13.0 Amendment of Agreement

13.1 None of the terms, conditions or provisions of this Agreement shall be held to have been changed, waived, varied, modified or altered by any act of statement of either party, their respective agents, servants or employees unless done so in writing signed by both parties.

## 14.0 Successors and Assigns

14.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

14.2 Neither party may assign all or any part of this Agreement without the written approval of the other party.

## 15.0 No Partnership

15.1 Nothing in this Agreement gives rise to a partnership or joint venture between the County and the Board or to an employment relationship between the County and the members, officers, directors, trustees, employees, contractors or volunteers of the Board under this Agreement.

## 16.0 Dispute Resolution

16.1 A dispute between the parties relating to the interpretation or implementation of this Agreement will be addressed through good faith negotiation, with or without the assistance of a mediator. The parties agree that in the event that they are not able to reach a resolution of all the matters in dispute after mediation, then the matters remaining in dispute will be finally determined by arbitration in accordance with the provisions of the *Ontario Arbitrations Act*.

16.2 The location for any such arbitration hearing will be within the County of Grey at a location to be determined by both the County and the Board.

IN WITNESS WHEREOF THE PARTIES hereunto attested by the hands of the proper officers duly authorized in that behalf as of the day and year first written above.

This space is intentionally blank.

## **The Corporation of the County of Grey**

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Kevin Eccles, WARDEN

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Sharon Vokes, CLERK

Together, we have the authority to bind the County.

## **Blue Water District School Board**

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Steve Blake  
Director of Education

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Rob Cumming  
Superintendent of Business Services

I/We have the authority to bind the Board.

**SCHEDULE "A"**

Project Cost

Total estimated project cost                      \$715,480

Less the total of Board and Provincial  
(i.e. Schools-First Child Care) funding    \$474,400

Amount of County Funding                      \$241,080

Note: these figures are based on amounts net of the HST rebates as received by the Board.

Payment Schedule:

Upon completion of 66% of the Project, the County will disburse 100% of the County Funding to the Board.

If a further capital contribution is required to enable the Project to move forward to completion, the Board may approach the County to request further funding from the County, pursuant to sections 5.2 and 5.3 of this Agreement.



