

**Canada-Wide Early Learning and Child Care (CWELCC)
START-UP GRANT AGREEMENT
("Grant Agreement" or "Agreement")**

dated ____ (day) of _____(month), _____(year) (the "Effective Date")

BETWEEN:

CITY OF HAMILTON

(the "City")

-and-

(the "Recipient")

WHEREAS Ontario's Action Plan for implementing Canada-Wide Early Learning and Child Care (CWELCC) system includes developing a framework for targeted space creation and providing funding for start-up grants to support the creation of new, affordable childcare spaces for children under age six, in targeted locations and for populations most in need;

AND WHEREAS funding for start-up grants has been allocated to the City by the province of Ontario to be distributed to eligible recipients pursuant to the Ministry of Education's Canada-Wide Early Learning and Child Care Guidelines (Released Date: November 2023 and updated March 2024) and the City's Directed Growth Plan (also known as the Access and Inclusion Framework);

AND WHEREAS the Recipient has agreed to provide NEW licensed full day spaces for childcare and early years services and receive special funding from the City for the provision of those services, as described in this Grant Agreement and in the attached Appendices;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties hereby agree as follows:

**ARTICLE 1
INTERPRETATION AND DEFINITIONS**

1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;

- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

“**Appendix A**” further describes the Services, Budget, Reports and other matters pertaining to the grant of Funds under this Agreement;

“**Appendix B**” is the Recipient’s application form which further describes the Recipient’s business plan;

“**Appendix C**” is the Milestone/Progress Reporting Template;

“**Appendix D**” is the Final Reporting Template;

“**Budget**” means the budget included in the Appendices and Reports;

“**Business Day**” means any day on which the administrative offices of the City are open;

“**Claims**” means any and all liability, loss, costs, damages and expenses (including legal fees on a substantial indemnity basis), causes of action, actions, claims, demands, lawsuits or other proceedings;

“**CWELCC System**” means the Canada-Wide Early Learning and Child Care System for early years and childcare funding provided for in an agreement entered into by the Province of Ontario and the Government of Canada;

“**Effective Date**” means the date written above;

“**Eligible Costs**” means the costs which are described in the Appendices and which are determined from time to time by the Ministry and/or the City as eligible for reimbursement;

“**Event of Default**” has the meaning ascribed to it in section 13.1;

“**Force Majeure**” has the meaning ascribed to it in Article 24;

“Funding Agreement” means the core funding agreement that has either been entered into or will be entered into between the Recipient and the City, including Schedule “E”, Canada-Wide Early Learning and Child Care System;

“Funding Guidelines” means the guidelines published by the City on its website, as amended from time to time, to provide guidance to the Recipient regarding proper childcare operations and expenditures of Funding in order to comply with relevant legislation, this Agreement and various City policies and procedures;

“Funds” or **“Funding”** means the money the City provides to the Recipient pursuant to the Grant Agreement, including any relevant Appendices and Reports;

“Grant Agreement” or **“Agreement”** means this agreement entered into between the City and the Recipient and includes all the Appendices described in Article 26 and the Reports;

“HST” means harmonized sales tax pursuant to the *Excise Tax Act* (Canada);

“Indemnified Parties” means the City and its officials, officers, directors, employees, servants, agents, volunteers, affiliates, contractors, and representatives;

“Material Change” means any reorganization, amalgamation, bulk sale of assets, dissolution, any transfer or issue by sale, assignment, bequest, inheritance, operation of law, or other disposition, or by subscription, of any part or all of the shares or units of the Recipient which would result in any change in the direct or indirect control of the Recipient, or other restructuring of any material kind;

“Ministry” means the Ministry of Education of the Province of Ontario, or such other Ontario Ministry or Ministries with responsibility for child care and social services;

“Notice” means any communication given or required to be given under Agreement;

“Parties” means the City and the Recipient;

“Party” means either the City or the Recipient;

“Provincial Agreement” means the agreement between the City and the Ministry whereby the City receives funding from the Ministry in order to deliver or facilitate child care and social services, and includes funding for

start-up grants, as the same may be amended, renewed, extended or replaced from time to time;

“**Reports**” means the reports that are generated between the parties using the templates in Appendix “C” and “D”; and

“**Services**” means the services or projects described in the Grant Agreement, Appendices and Reports.

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 2.1 **General.** The Recipient represents, warrants and covenants that:
- (a) it is, and shall continue to be for the term of the Grant Agreement, a validly existing legal entity with full power to fulfill its obligations under the Grant Agreement;
 - (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to provide the Services; and
 - (c) any information the Recipient provided to the City in support of its request for Funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Grant Agreement.
- 2.2 **Execution of Agreement.** The Recipient represents and warrants that:
- (a) it has the full power and authority to enter into the Grant Agreement; and
 - (b) it has taken all necessary actions to authorize the execution of the Grant Agreement.
- 2.3 **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain for the period during which the Grant Agreement is in effect, by-laws or other legally necessary instruments to:
- (a) establish procedures to ensure the ongoing effective functioning of the Recipient;
 - (b) establish decision-making mechanisms;
 - (c) provide for the prudent and effective management of the Funds;
 - (d) establish procedures to enable the successful provision of Services;

- (e) establish procedures to enable the timely identification of risks to the provision of Services and strategies to address the identified risks;
 - (f) establish procedures to enable the preparation and delivery of all Reports required pursuant to Article 6; and
 - (g) deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Grant Agreement.
- 2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the City with proof of the matters referred to in this Article 2.

ARTICLE 3 TERM OF THE AGREEMENT

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall continue in effect until the earliest of one of the following dates:
- (a) The date the Final Payment is processed according to Schedule “D”;
 - (b) it is superseded or replaced by a subsequent agreement; or
 - (c) until it is terminated pursuant to Article 11, 12 or 13 of this Agreement.

ARTICLE 4 FUNDS AND PROVISION OF SERVICES

- 4.1 **Funds Provided.** Contingent on the City receiving all required funding and other support from the Ministry under Ontario’s Action Plan and start-up grant program, and in compliance with any restrictions imposed by the Ministry, the City shall:
- (a) provide the Recipient the Funds for the purpose of providing the Services; and
 - (b) provide the Funds to the Recipient in accordance with the payment plan described in the Appendices.
- 4.2 **Limitation on Payment of Funds.** Despite section 4.1, the City;
- (a) shall not provide any Funds to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 10.2;

- (b) is not obligated to provide installments of Funds until it is satisfied with the continued provision of Services;
- (c) is not obligated to provide installments of Funds if the Recipient is in breach of its obligations under this Agreement; and
- (c) may adjust the amount of Funds it provides to the Recipient based upon the City's assessment of the information provided by the Recipient pursuant to section 6.1 and based upon the City's inspection pursuant to section 6.3.

4.6 Use of Funding and Services. The Recipient shall:

- (a) deliver the Services:
 - (i) in accordance with the description set out in the Appendices, Reports and otherwise in accordance with the terms and conditions of the Agreement;
 - (ii) in accordance with the policies, Funding Guidelines and requirements of the City as communicated to it from time to time, including any guidelines and requirements imposed by the Ministry; and
 - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Services, including without limitation legislation relating to privacy, Building Code, Fire Code, human rights and child protection;
- (b) where required by applicable legislation, hold a valid, unconditional licence under the *Child Care and Early Years Act, 2014* (Ontario) at all times;
- (c) use the Funds only for the purpose of providing the Services;
- (d) if acquiring goods, services or both with the Funds, the Recipient shall do so through a process that promotes the best value for money;
- (e) spend the Funds only in accordance with the Budget and towards the Eligible Costs;
- (f) ensure that the Services, equipment, and capital improvements and construction project(s) provided or undertaken pursuant to this Agreement comply with all applicable legislative standards including the Building Code, Fire Code, Canadian Standards Association, and infection/prevention and control practices applicable to programs being delivered in the facility; and

- (g) return any Funds to the City which remain unspent or have not been spent on Eligible Costs within two years from the Effective Date.
- 4.7 **No Changes.** The Recipient shall:
- (a) not make any changes to the Services and/or the Budget without the prior written consent of the City; and
 - (b) abide by the terms and conditions the City may require pursuant to any consent.
- 4.8 **Re-Negotiation of Budget.** The Parties agree that the Budget may be negotiated from time to time while the Agreement is in force.
- 4.9 **Payment of Funds.** Notwithstanding anything to the contrary in the Appendices, the City reserves the right to determine the installments, times and manner of payment of the Funds.
- 4.10 **Interest Bearing Account.** If the City provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.
- 4.11 **Interest.** If the Recipient earns any interest on the Funds:
- (a) the City may deduct an amount equal to the interest from any further installments of Funds; or
 - (b) the Recipient shall pay an amount equal to the interest to the City as directed by the City.
- 4.12 **HST.** The Recipient shall not use the Funds for any HST costs for which it has or will receive a rebate, tax credit, input tax credit or refund.
- 4.13 **Disposition.** The Recipient acknowledges that pursuant to the Provincial Agreement, the City is required to comply with certain requirements regarding the disposition of assets that were paid for using the Funds. The Recipient shall not sell, lease, change the use or otherwise dispose of any item, asset, furnishing or equipment purchased or created with the Funds pursuant to the Agreement without the prior written consent of the City, which may be given subject to such conditions as the City deems advisable. The City may, at its discretion, require the Recipient to give the assets to the City or transfer them directly to another childcare provider. Without limiting Article 25, this clause shall survive the expiry or termination of this Agreement, in alignment with the Provincial Agreement regarding disposition of assets.

**ARTICLE 5
CONFLICT OF INTEREST**

5.1 **No Conflict of Interest.** The Recipient shall perform the Services and use the Funds without an actual, potential or perceive conflict of interest.

5.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interest that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Services and the use of the Funds.

5.3 **Disclosure to City.** The Recipient shall:

- (a) disclose to the City, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
- (b) comply with any terms and conditions that the City may reasonably prescribe as a result of the disclosure.

**ARTICLE 6
REPORTING, ACCOUNTING AND REVIEW**

6.1 **Preparation and Submission.** The Recipient shall:

- (a) submit to the City at the address provided in section 17.1, all Reports in accordance with the timelines and content requirements set out in the Appendices and/or Funding Guidelines, or in a form as specified by the City from time to time;
- (b) submit to the City at the address provided in section 17.1, any other reports requested by the City in accordance with the timelines and content requirements specified by the City;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the City; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

6.2 **Record Maintenance.** The Recipient shall keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Services in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Services;

for a period of seven years from the date of expiry or termination of the Agreement.

6.3 **Inspection.** The City, its authorized representatives or an independent auditor identified by the City may, at its own expense, upon 24 hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the provision of Services and the Recipient's expenditure of the Funds and, for these purposes, the City, its authorized representatives or an independent auditor identified by the City may:

- (a) inspect and copy the records and documents referred to in section 6.2; and
- (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Services.

6.4 **Disclosure.** To assist in respect of the rights set out in section 6.3, the Recipient shall disclose any information reasonably requested by the City, its authorized representatives or an independent auditor identified by the City, and shall do so in a form reasonably requested by the City, its authorized representatives or an independent auditor identified by the City, as the case may be.

6.5 **No control of Records.** No provision of the Agreement shall be construed so as to give the City any control whatsoever over the Recipient's records.

6.6 **Provincial Requirements.** The Recipient acknowledges that pursuant to the Provincial Agreement, the City is required to comply with certain accounting and reporting requirements. The Recipient agrees to provide the City with such records, documents and information at such times and to do any other thing or things as may be necessary or desirable in order for the City to comply with the accounting and reporting requirements set out in the Provincial Agreement. The Recipient agrees to indemnify and save harmless the City in the event of a breach of such obligations by the Recipient.

- 6.7 **Staff Assistance.** The Recipient agrees that the staff providing the service pursuant to this Agreement will, upon request, be available for consultation with City Staff.

ARTICLE 7 CONFIDENTIALITY

- 7.1 **Duty of Confidentiality.** The Recipient, its directors, officers, employees, agents and volunteers shall hold confidential and shall not disclose or release to any person other than applicable City staff at any time during or following the term of the Agreement, except where required or permitted 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.

ARTICLE 8 MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 8.1 **MFIPPA.** The Recipient acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the City in connection with the Services or otherwise in connection with the Agreement is subject to disclosure in accordance with that Act.

ARTICLE 9 LIMITATION OF LIABILITY AND INDEMNITY

- 9.1 **Limitation of Liability.** The City shall not be responsible in any way for provision of the Services. The City and the Indemnified Parties shall not be liable to the Recipient, its subcontractors or their respective officials, officers, directors, employees, servants, partners, agents, affiliates, volunteers, contractors, and representatives for Claims howsoever caused that arise out of or are in any way related to the Services or the Agreement.
- 9.2 **Indemnification.** The Recipient shall, both during and following the Term of the Agreement, defend, indemnify and hold harmless the City from and against any and all Claims, by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Recipient, its subcontractors or their respective officials, officers, directors, employees, servants, partners, agents, affiliates, volunteers, contractors, and representatives in the course of providing the Services under, or otherwise in connection with, the Agreement. The Recipient further agrees to indemnify and hold harmless the City for any incidental,

indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the City, claimed or resulting from such Claims.

ARTICLE 10 INSURANCE

10.1 **Recipient's Insurance.** The Recipient shall, at its own expense, including the cost of deductibles, obtain and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation) and contingent employer's liability coverage, having an inclusive limit of not less than \$2,000,000 per occurrence. If a policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. Coverage shall be included for injury/loss/damage, due to pollution arising from "hostile fires".

Standard Form Automobile Liability Insurance (if applicable) that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per occurrence.

Non-Owned Automobile Liability Insurance (if applicable) in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the Recipient, that are used or operated on its behalf for the provision of services under the Contract;

Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits for coverages. Certificate(s) of insurance must specify the underlying policies to which the umbrella/excess coverages apply and indicate any applicable aggregates.

Property Insurance in an amount not less than the replacement cost of the property being funded under this Agreement for all risk or broad perils coverage. The City of Hamilton to be shown as Loss Payee for any property funded under this Agreement

All policies of insurance shall, subject to the terms of the indemnity provisions,

- (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
- (b) show all values in Canadian Funds;

- (c) be maintained continuously during the course of carrying out the Services; or for such period of time as may be required after completion of the Services, as deemed necessary by the City, but in all cases for a period of not less than 24 calendar months from the date of the completed operations in accordance with the Appendices
- (d) provide for a deductible amount of no greater than \$10,000; or such other amount as the City, at its sole discretion, may deem appropriate.
- (e) (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance) include the City named as an additional insured, to the extent of the Recipients obligations to the City under the Agreement;
- (f) contain cross liability and severability of interest provisions, as may be applicable;
- (g) preclude subrogation claims against the City and any other person insured under the policy; and
- (h) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the Recipient before the Recipient takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof
- (i) in the case of Commercial General Liability Insurance and Errors and Omissions Insurance; When so requested by the City, the Recipient shall notify the City of any and all claims in respect of this policy of insurance that are in excess of twenty-five thousand dollars (\$25,000). If such claims reduce the aggregate coverage amount available from the limits described herein, or as subsequently amended by agreement between the City and the Recipient, then the City may require the Recipient acquire additional insurance coverage to ensure that the aggregate limits are maintained at levels described above. The Recipient shall bear the cost of acquiring such additional insurance.

10.2 **Proof of Insurance.** The Recipient shall provide the City with a certificate of insurance prior to execution of the Agreement and from time to time keep on file with the City renewal agreements and other documents sufficient to show and establish accurately at all times the current status of policies in force, and in particular shall submit to the City, not later than 15 days before the expiration of every current policy, evidence of the renewal of the policy or the issuance of a replacement policy. Certificate Holder shall be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Children's and Community Services Division, Healthy and Safe Communities, P.O. Box 2040, 6th Floor, Lister Building, Hamilton ON, L8P 4Y5. All certificates, cancellation, non-renewal or adverse change notices shall be e-mailed to CWELCC@hamilton.ca or can be mailed to this address.

**ARTICLE 11
TERMINATION ON NOTICE**

- 11.1 **Termination on Notice:** The Recipient may terminate the Agreement upon 90 days' written notice to the City. If the Agreement is terminated pursuant to this section, the City shall cancel further installments of Funds and the Recipient shall return all of the Funds provided under this Agreement, to the City immediately.

**ARTICLE 12
TERMINATION WHERE MINISTRY FUNDING CEASES**

- 12.1 The City may terminate the Agreement immediately and/or withhold any payment of Funds without liability, penalty or cost, if:
- (a) City Council does not approve funding to the Recipient;
 - (b) the Ministry ceases providing funding to the City for the Services; or
 - (c) if the Provincial Agreement is terminated for any reason.
- 12.2 If the Agreement is terminated pursuant to Article 12, and the Recipient has not otherwise breached this Agreement, the Recipient shall not be obliged to return any Funds already spent under this Agreement to the City and the City shall have no further obligations, including funding obligations, arising from this Agreement.

**ARTICLE 13
EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION
FOR DEFAULT**

- 13.1 **Events of Default.** Each of the following events shall constitute an “Event of Default”:
- (a) in the opinion of the City, the Recipient has knowingly provided false or misleading information regarding its request for Funds or in any other communication with the City;
 - (b) in the opinion of the City, the Recipient breaches any material requirement of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) providing the Services within the timelines described in Appendix “A”;
 - (ii) use or spend Funds within two years from the Effective Date;

- (iii) apply the Funds towards Eligible Costs;
 - (iv) provide Reports or such other reports as may have been requested pursuant to section 6.1;
 - (v) failure to receive and/or hold a valid, unconditional licence under the *Child Care and Early Years Act, 2014* (Ontario) and to keep the licence in good standing for all child care spaces for the Term of the Agreement, as required by applicable legislation;
 - (vi) failure to comply with all the requirements listed in Appendix "A", including but not limited to maintaining the Recipient's number of approved childcare spaces;
 - (vii) failure to sign and/or maintain in good standing the City's core Funding Agreement; or
 - (viii) failure to sign and/or maintain in good standing Schedule 'E' regarding CWELCC in order to participate in the CWELCC System until March 31, 2026;
- (c) the nature of the Recipient's operations, or its corporate status, changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which the City provides the Funds;
 - (d) there has been a Material Change in the Recipient without the prior written consent of the City;
 - (e) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
 - (f) the Recipient withdraws from CWELCC or ceases to operate; and
 - (g) an event of Force Majeure that continues for a period of 60 days or more.

13.2 **Corrective Action.** If an Event of Default occurs, the City may, at any time, take one or more of the following actions:

- (a) initiate any action the City considers necessary in order to recuperate the value of the Funds owed to the City, including, but not limited to, seizing any or all equipment and/or other assets belonging to the Recipient;

- (b) suspend the payment of Funds for such period as the City determines appropriate;
- (c) reduce the amount of the Funds;
- (d) cancel all further installments of Funds;
- (e) demand the repayment of any or all Funds issued to the Recipient, whether or not the Funds are still in possession or under the control of the Recipient;
- (f) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by the City;
- (g) demand the repayment of an amount equal to any (including all) of the Funds the City provided to the Recipient;
- (h) reduce the amount of funding being provided to the Recipient pursuant to another funding agreement with the City to satisfy the outstanding Funds owed to the City pursuant to this Grant Agreement; and/or
- (i) terminate the Agreement immediately upon giving Notice to the Recipient.

13.3 **Opportunity to Remedy.** In addition to its rights provided for in section 13.2, the City may provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:

- (a) of the particulars of the Event of Default; and
- (b) of the period of time within which the Recipient is required to remedy the Event of Default.

13.4 **Recipient not Remediating.** If the City has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 13.3 and:

- (a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;
- (b) it becomes apparent to the City that the Recipient cannot completely remedy the Event of Default within the time period specified in the Notice or such further period of time as the City considers reasonable; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the City,

the City may initiate any one or more of the actions provided for in sections 13.2.

- 13.5 The rights and remedies given to the City in this Agreement are distinct, separate and cumulative, and none of them, whether exercised by the City or not, shall be deemed to be in exclusion of any other rights or remedies provided in this Agreement or by law or in equity.
- 13.6 **Effective date.** The effective date of any termination under this Article shall be the last day of the Notice period, the last day of any subsequent Notice period or immediately, whichever applies.

ARTICLE 14 FUNDS UPON EXPIRY

- 14.1 **Funds Upon Expiry.** Without limiting any rights of the City under Article 11, 12 or 13, the Recipient shall, upon termination of the Agreement, return to the City any Funds remaining in its possession or under its control.

ARTICLE 15 REPAYMENT

- 15.1 **Debt Due.** If the Recipient owes any monies, including any Funds, to the City, whether or not their return or repayment has been demanded by the City, such monies shall be deemed to be a debt due and owing to the City by the Recipient and the Recipient shall pay or return the amount to the City immediately unless the City directs otherwise.
- 15.2 **Interest Rate.** The City may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the City on accounts receivable.
- 15.3 **Payment of Monies to City.** The Recipient shall pay any monies owing to the City by cheque payable to the "City of Hamilton" and mailed to the City at the address provided in section 17.1.

ARTICLE 16 NO DISCRIMINATION

- 17.1 **Human Rights Code.** It is a condition of the Agreement and of every other agreement entered into pursuant to the performance of the Agreement, that no right under section 1 or 5 of the *Human Rights Code* will be infringed. Breach of this condition is sufficient grounds for immediate termination of the Agreement and no further notice is required.

**ARTICLE 17
NOTICE**

17.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by postage-prepaid mail, personal delivery, facsimile or email and shall be addressed to the City and the Recipient respectively as set out below or at such other address as either Party shall later designate to the other in writing:

To the City:

City of Hamilton
Healthy & Safe Communities
Children's & Community Services
P.O. Box 2040, 6th Floor Lister Building
Hamilton ON, L8P 4Y5

Attention: Manager, Business Support

Fax: 905-546-4668
Email: CWELCC@hamilton.ca

To the Recipient:

Attention:

Fax:
Email:

17.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after such Notice is mailed; or
- (b) in the case of personal delivery, on the day such Notice is received by the other Party;
- (c) in the case of facsimile or email, on the day such Notice is sent, but if the day is not a Business Day, then on the first Business Day thereafter.

17.3 **Postal Disruption.** Despite section 17.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by personal delivery, facsimile or email.

**ARTICLE 18
SEVERABILITY OF PROVISIONS**

- 18.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

ARTICLE 19 WAIVER

- 19.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 17. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 20 INDEPENDENT PARTIES

- 20.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the City and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 21 ASSIGNMENT OF AGREEMENT OR FUNDS

- 21.1 **No Assignment by Recipient.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the City.
- 21.2 **Enurement.** The Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 22 GOVERNING LAW

- 22.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.
- 22.2 **Reference to Laws.** A reference to any statute, law, by-law, rule, regulation, policy, guideline, ordinance, notice, ruling or order or to a provision thereof will be deemed to include a reference to any substitution therefor or amendment thereof.

**ARTICLE 23
FURTHER ASSURANCES**

- 23.1 **Agreement into Effect.** The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to its full extent.

**ARTICLE 24
CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY**

- 24.1 **Force Majeure Means.** For the purposes of the Agreement, “**Force Majeure**” means an event that:
- (a) is beyond the reasonable control of a Party; and
 - (b) makes a Party’s performance of its obligations under the Agreement impossible, or so impracticable as reasonable to be considered impossible in the circumstances.
- 24.2 **Force Majeure Includes.** Force Majeure includes:
- (a) infectious diseases, war, riots and civil disorder;
 - (b) storm, flood, earthquake and other severely adverse weather conditions;
 - (c) confiscation and other similar action by government agencies;
 - (d) lawful act by a public authority; and
 - (e) strikes, lockouts and other labour actions,
- if such events meet the test set out in section 24.1.
- 24.3 **Force Majeure Shall Not Include.** Force Majeure shall not include:
- (a) any event that is caused by the negligence or intentional action of a Party or such Party’s agents or employees;
 - (b) any event that a diligent Party could reasonably have been expected to:
 - (i) take into account at the time of the execution of the Agreement; and

- (ii) avoid or overcome in the carrying out of its obligations under the Agreement.

24.4 **Failure to Fulfill Obligations.** Subject to section 13.1(g), the failure of either Party to fulfill any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

ARTICLE 25 SURVIVAL

25.1 **Survival.** All obligations of the Parties will expressly, or by their nature, survive termination or expiration of the Agreement until, and unless, they are fulfilled, or by their nature expire. Without limiting the generality of the foregoing, the provisions of Article 6 shall survive for a period of seven years from the date of expiry or termination of the Agreement.

ARTICLE 26 APPENDICES

- 26.1 **Appendices.** The Agreement includes Appendices describing the Services, Budget, Reports and other matters pertaining to the grant of Funds, whether or not they are physically attached to this Agreement.
- 26.2 **Revised Appendices:** The City may, at any time, upon consultation with the Recipient, provide amended or new Appendices.
- 26.3 **Deemed to be Replaced:** if the City provides a new or amended Appendix in accordance with section 26.2 the new or amended Appendix shall be deemed to replace the previous version of the Appendix as the case may be, for the period of time to which it relates, as provided for in the Appendix, or for the duration of the Term.
- 26.4 **Termination by Recipient:** If the Recipient does not agree with all or any new or amended Appendix, the Recipient may terminate the Agreement immediately by giving notice to the City within 30 days of the City providing the new/amended Appendix "A".
- 26.5 **Consequences of Termination by Recipient:** If the Recipient terminates the Agreement pursuant to section 26.4, the City may reinstitute the previous Appendix. If the City does not reinstitute the previous Appendix, the Recipient shall not be obliged to return any Funds already spent under this Agreement to the City and the City shall have no

further obligations, including funding obligations, arising from this Agreement.

ARTICLE 27 EXECUTION OF AGREEMENT

- 27.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 27.2 **Electronic Execution and Delivery of Agreement (including Appendices).** The Parties agree that the Agreement (or any Appendices) may be validly executed electronically, and that their respective electronic signature is the legal equivalent of a manual signature. The electronic or manual signature of a Party may be evidenced by one of the following means and transmission of the Agreement may be as follows:
- (a) a manual signature of an authorized signing representative placed in the respective signature line of the Agreement and the Agreement delivered by facsimile transmission to the other Party;
 - (b) a manual signature of an authorized signing representative placed in the respective signature line of the Agreement and the Agreement scanned as a Portable Document Format (PDF) and delivered by email to the other Party;
 - (c) a digital signature, including the name of the authorized signing representative typed in the respective signature line of the Agreement, an image of a manual signature or an Adobe signature of an authorized signing representative, or any other digital signature of an authorized signing representative, placed in the respective signature line of the Agreement and the Agreement delivered by email to the other Party; or
 - (d) any other means with the other Party's prior written consent.

ARTICLE 28 ENTIRE AGREEMENT

- 28.1 **Entire Agreement.** The Agreement, the Appendices and Reports constitute the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 28.2 **Modification of Agreement.** Except as otherwise provided for in the Agreement, the Agreement may only be amended by a written agreement duly executed by the Parties.

28.3 **Conflict.** Where there is any ambiguity or conflict between the provisions contained in the body of the Agreement and the provisions contained in other documents that the Recipient shall comply with, the order of precedent is as follows:

- a) *Child Care and Early Years Act, 2014*, as amended, and its regulations.
- b) Grant Agreement;
- c) Appendix "A";
- d) Appendix "B"
- e) Appendix "C"
- f) Appendix "D"
- g) Funding Guidelines

**ARTICLE 29
RIGHTS AND REMEDIES CUMULATIVE**

29.1 **Rights and Remedies Cumulative.** The rights and remedies of the City under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

The Parties have executed the Agreement as of the Effective Date.

CITY OF HAMILTON

Name:

Date

Title: General Manager

RECIPIENT

Name:

Date

Title:

I have authority to bind the corporation.

Appendix “A” – Description of Services and Payment Schedule for CWELCC Start-Up Grant Funding

PART 1: APPROVED GROWTH & LOCATIONS

- The Funding is being provided to the Recipient to support the creation of new, affordable childcare spaces based on the City’s Access and Inclusion Framework for children 0-4 years in the approved location as per the information below (the “Services”).

Approved Location: _____

Approved Growth	
Age Group	Licensed Spaces
Infant	
Toddler	
Preschool	
Total	

Note: When applicable, build in alternate capacity request during initial licensing process to support future program needs.

PART 2: FUNDING DESCRIPTION & REQUIREMENTS

- The creation of new spaces supported with the Funding must improve access to licensed childcare in communities with vulnerable children and children from diverse populations including:
 - Children living in low-income families
 - Children with special needs
 - Indigenous children
 - Black and other racialized children
 - Children of newcomers to Canada
 - Francophone children
- The Recipient agrees that:
 - **Within two (2) years of the date the Recipient submitted its application for start-up grant funding, the newly licensed full day spaces supported by the Funding under this Agreement must be in operation;**
 - **Funding must be spent within two (2) years of the Effective Date;**

- **(If applicable) The Recipient shall complete the work proposed in its application for the start-up grant funding by December 31 of the year in which its project was set for completion (See Appendix “B”);**
- The Recipient shall participate in the CWELCC System until March 31, 2026 and maintain its number of approved child care spaces for the term of this Agreement;
- In the event that the Recipient withdraws from CWELCC or ceases its operations prior to March 31, 2026, the Recipient shall return all Funding to the City.

Eligible Expenses:

- Eligible Expenses for centre-based child care Recipient include:
 - Play based materials, equipment and furnishings (both indoors and outdoors) as outlined in Section 19 of O. Reg. 137/15 under the *Child Care and Early Years Act, 2014*.
 - Non-consumable supplies/equipment to support the ongoing regular operations of the child care program (for example, appliances, IT, supplies to support learning environments while adhering to health and safety requirements)
 - Renovations, additions, or repairs to licensed child care facilities or potential child care facilities as approved by the City
 - Changes to outdoor play spaces that are required as a result of the expansion of child care spaces in the centre so that the Recipient continues to comply with Section 24 of O. Reg. 137/15 under the *Child Care and Early Years Act, 2014*.
 - Leasehold improvements

Ineligible Expenses:

- Purchase of land or buildings
- Debt costs including principal and interest payments related to capital loans, mortgage financing, and operating loans
- Property taxes
- Expenditures related to 5-12 age groups
- School-based child care spaces
- Indoor and outdoor renovations, additions or repairs to home child care providers premises or potential home child care providers premises
- Capital projects for licensed childcare programs that run during school hours for kindergarten and school-aged children and before and after school programs
- HST

PART 3: REPORTING

- The Recipient must report on data for meeting Funding requirements as determined by the City and the reporting parameters set out in the Guidelines and the Reporting Templates (Appendix “C” and “D”).
- The Recipient must report the following data to the City:
 - Number of net new licensed spaces supported with Funding by age group (infant, toddler, preschool, kindergarten)
 - Total start-up costs to support the creation of new spaces as set out on this Appendix
- The Recipient is required to retain and submit invoices as requested by the City and in accordance with the Agreement.

PART 4: BUDGET

Planned Project Completion Date: _____ (insert date)
The maximum amount payable by the City to the Recipient (centre-based applications) for Funding under this Agreement is \$350,000 for every 20 child care spaces created, as approved by the Ministry.

Based on the Recipient’s proposal, the City is tentatively approving the following amount: _____ (insert amount) (“Approved Funding”).

In the event that the proposed childcare spaces provided, as indicated by the Recipient, is less than the actual childcare spaces approved by the Ministry, the City shall adjust Funding accordingly and the Recipient shall return Funds to the City, if necessary.

The Recipient acknowledges that the City shall only pay for Services in respect of which the Recipient’s expense was incurred within the approved time period. In no event shall the City pay any amount in excess of the maximum amount permitted by the Ministry pursuant to the Ministry’s Guidelines. The Recipient covenants and agrees that it shall remit to the City the amount of any overpayment received by the Recipient. Furthermore, any Funds not spent by the Expiry or Termination of this Agreement shall be returned to the City.

PART 5: PAYMENT SCHEDULE

The City shall pay the Recipient in accordance with the following payment schedule:

Payment Schedule			
Payment	Milestones	Requirement	Amount Issued
1	Milestone 1 - Signing of CWELCC Start-up Grant Agreement	Submit signed CWELCC Start-up Grant Agreement, Insurance Policy(s), Lease Agreement or proof of Ownership	20% of Approved Funding (initial payment) issued within 30 days of signed agreement
2	Milestone 2 - Renovations, additions or repairs to licensed full day child care facilities or potential child care facilities as approved by City of Hamilton and/or leasehold improvement Milestone 3 - Changes to outdoor play space that are required as a result of the expansion of child care spaces in the centre to comply with section 24 of O. Reg. 137/15 under the Child Care and Early Years Act, 2014 .	Submit copy of the construction permits and contractor(s) quotes(s)	Up to an additional 20% of Approved Funding to be issued for Milestone 2 and 3 within 30 days after receipt of the construction permits and contractor(s) quote(s)
3	Start-up Grant Milestone/Progress Reporting Template (Appendix "C") Milestone 2 & 3 update. Milestone 4 - Play materials, equipment, and furnishings (both indoors and outdoors) as outlined in Section 19 of O. Reg. 137/15 under the Child Care and Early Years Act, 2014 . Milestone 5 - Non-consumable supplies/ equipment to support the ongoing regular operation of the childcare program (e.g. appliances, IT, supplies to support learning environments while adhering to health and safety requirements).	Provide a progress report on works completed with issued payment #2 (Milestone 2&3), and an itemized list of planned purchases, including projected cost and copies of contractor's final invoice when available and a copy of the final floor plan.	Up to an additional 50% of Approved Funding to be issued for Milestone 4 and 5 within 30 days after receipt and approval of Appendix "C" (Note: minimum holdback of 10% of funding until project completed) City of Hamilton's Early Years Quality program staff will reach out to schedule a site visit.

4	<p>Start-up Grant Final Reporting Template (Appendix “D”) Milestone 6 - Program is operational</p>	<p>Recipient’s license is approved on the Ministry’s Child Care Licensing System and all requested information by the City is received from the Recipient.</p>	<p>Final payment, based on Maximum Approved Funding OR Recipient pays City any overpayment (if applicable), to be issued 30 days after license issued, receipt and approval of Start-up Grant Final Reporting Template Appendix “D” and signing of Funding Agreement and Schedule “E”.</p>
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SAMPLE

Appendix “B” – Recipient’s Application Form and Business Plan

Appendix “C” – Milestone/Progress Reporting Template



Appendix “C” City of Hamilton Canada-Wide Early Learning and Child Care Start-up Grant Progress Reporting Template

The start-up funding (“Funding”) is being provided to support directed growth for the creation of new, affordable childcare spaces based on the City’s Access and Inclusion Framework for the approved spaces and location identified in Appendix “A”.

The information provided on this template will be used to determine Payment #3 identified in Appendix “A” Part 4: Payment Schedule. Funding will only be provided for Eligible Expenses as described in Appendix “A”.

HST is not an eligible cost. All costs are to be reported net of HST.

SECTION 1: Applicant and Site Details	
Contact Name	
Email Address	
Phone Number	
Site Name	
Site Address	

SECTION 2: Program and Start-up Grant Details		
Total Number of Approved Spaces		
Anticipated Completion Date	Original	Revised (if applicable)
Approved Funding*	\$	
Payment 1: Funding Issued (20%)	\$	
Payment 2: Funding Issued	\$	
*This is the amount that has been tentatively approved by the City based on Ministry guidelines and approved child care spaces. This may be reduced on the final outcome of the project (e.g. final approved licensed child care spaces).		

SECTION 3: Milestone 2 and 3 Progress Update			
Milestone	% Completed	Status Update (Description of the completed work and work still to be done)	Total Cost of Project(s)
2- Renovations, additions or repairs to the child care facilities and/or leasehold improvements			
3- Changes to outdoor play space			
Section 3: Total Cost of Project(s)			

SECTION 4: Milestone 4 and 5 - Funding Needs		
Milestone	Provide an itemized list of expenses with the projected cost. Attach invoices/quotes if available.	Total Amount Required
4 & 5 Play materials, equipment, furnishings (both indoors and outdoors) and non-consumable supplies/equipment		
Section 4: Total Funding Needs		

Note: All receipts and invoices are to be retained and provided as requested by the City. HST is not an eligible cost. All costs are to be reported net of HST.

SECTION 5: Additional Comments

SECTION 6: Signature	
As the Signing Authority for the proposed child care program, I confirm that all the details provided above are accurate.	
Printed Name:	Date:
Signature	

Submit this completed form and supporting attachments via [Submission Form](#) to receive payment.

TO BE COMPLETED BY CITY OF HAMILTON	
Approved Funding	
Total Funding Required for Start-up (Section 3 & 4)	
Total Funding Approval (lesser of Funding Approval or Funding Required)	
Less: Payment 1 Issued	
Less: Payment 2 Issued	
Outstanding Balance / (Surplus)	
Less: 10% Holdback	
Payment 3: Funding to be Issued	
Notified Early Years Quality team to book site visit	Date:
Date Processed:	Processed By:

Appendix “D” – Final Reporting Template



Appendix “D” City of Hamilton Canada-Wide Early Learning and Child Care Start-up Grant Final Reporting Template

The start-up funding (“Funding”) is being provided to support directed growth for the creation of new, affordable childcare spaces based on the City’s Access and Inclusion Framework for the approved spaces and location identified in Appendix “A”.

This final Report is to either:

- 1) issue the remaining Funds (at a minimum, the 10% holdback) identified in Appendix “A” Part IV, and/or the progress Report (s) per the payment schedule(s); OR
- 2) collect any overpayment from the Recipient based on Maximum Funding Approval.

HST is not an eligible cost. All costs are to be reported net of HST.

SECTION 1: Applicant and Site Details	
Contact Name	
Email Address	
Phone Number	
Site Name	
Site Address	

SECTION 2: Program and Start-up Grant Details	
Total Number of Approved Spaces	
Completion Date	
Approved Funding*	\$
Payment 1: Funding Issued	\$
Payment 2: Funding Issued	\$
Payment 3: Funding Issued	\$
*This is the amount that has been tentatively approved by the City based on Ministry guidelines and approved child care spaces. This may be reduced on the final outcome of the project (e.g. final approved licensed child care spaces).	

SECTION 3: Milestone 2 and 3 Final Update			
Milestone	% Completed	Status Update (Description of the completed work)	Final Cost of Project(s)
2- Renovations, additions or repairs to the child care facilities and/or leasehold improvements	100%		
3- Changes to outdoor play space	100%		
Section 3: Total Cost of Project(s)			

SECTION 4: Milestone 4 and 5 – Final Update		
Milestone	Provide an itemized list of expenses (actual cost)	Final Costs
4 & 5 Play materials, equipment, furnishings (both indoors and outdoors) and non-consumable supplies/equipment		
Section 4: Total Cost		

Note: All receipts and invoices are to be retained and provided as requested by the City. HST is not an eligible cost. All costs are to be reported net of HST.

SECTION 5: Additional Comments

SECTION 6: Signature			
<p>After City receipt of the completed Appendix "D", the City will provide you with the Funding Agreement and Schedule E for execution.</p> <p>The final payment will be issued once:</p> <ul style="list-style-type: none"> • Appendix "D" is approved. • Ministry Licence is issued. • Site visit by City of Hamilton Early Years Quality Staff. • Core Funding Agreement and Schedule "E" is executed (these documents will only be executed by the City once any overpayment is collected by the Recipient, if applicable). <p>As the Signing Authority for the proposed child care program, I confirm that all the details provided above are accurate.</p>			
Printed Name:		Date:	
Signature			

Submit this completed form and supporting attachments via [Submission Form](#) to receive payment.

TO BE COMPLETED BY CITY OF HAMILTON			
Maximum Funding Approved			
Total Funding Issued			
Amount Outstanding / (Surplus)			
Calculated 10% Holdback			
Payment 4: Final Payment / (Recovery) Calculation			
Ministry Licence Issued		Date:	
Quality Site Visit Completed		Date:	
Signed Core Funding Agreement Received		Date:	
Signed Schedule "E" Received		Date:	
Date Final Payment Processed:		Processed By:	