

Bill No. 61
2018

By-law No. A.- _____

A by-law to authorize and approve a Child Care Services Cost Apportionment and Agency Agreement between The Corporation of the City of London and The Corporation of the County of Middlesex and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS pursuant to the *Child Care and Early Years Act, 2014*, S.O. 2014, c.11, Sched. 1, (the "Act"), and its Regulations, the Province of Ontario designated The Corporation of the City of London (the "City") as the Designated Service Manager for the geographic area of the City and the County of Middlesex (the "County") (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 13 of Regulation 138/15, being the Funding, Cost Sharing and Financial Assistance Regulation ("O.Reg. 138/15") pursuant to 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 an agreement made under section 14 of O.Reg. 138/15;

AND WHEREAS section 14 of O. Reg. 138/15 states that the municipalities included in a service area may enter into an agreement under which the municipalities share or apportion among the municipalities costs payable or to be payable under O.Reg. 138/15.

AND WHEREAS section 57(2) of the Act permits a service manager to exercise natural person powers in regard to any matter relating to the delivery agent's powers and duties under the Act, subject to the restrictions or conditions imposed in the Act and in the designation as service manager;

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

AND WHEREAS the City and the County desire to enter into an agreement for the County, as the agent of the Designated Service Manager, to manage service delivery of the Child Care Services 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.

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Child Care Services Cost Apportionment and Agency Agreement substantially in the form attached as "Schedule D" to this by-law, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the date it is passed.

PASSED in Open Council on January 30, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – January 30, 2018
Second Reading – January 30, 2018
Third Reading – January 30, 2018

“Schedule D”

CHILD CARE SERVICES COST APPORTIONMENT AND AGENCY AGREEMENT

AGREEMENT effective the 1st day of January, 2018.

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 *Child Care and Early Years Act, 2014*, SO 2014, c.11, Sched. 1, (the “Act”), and its Regulations, the Province of Ontario designated the City as the Designated Service Manager, as defined herein, 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 13 of Regulation 138/15, being the Funding, Cost Sharing and Financial Assistance Regulation (“O.Reg. 138/15”) pursuant to 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 an agreement made under section 14 of O.Reg. 138/15;

AND WHEREAS section 14 of O. Reg. 138/15 states that the municipalities included in a service area may enter into an agreement under which the municipalities share or apportion among the municipalities costs payable or to be payable under O.Reg. 138/15;

AND WHEREAS section 57 of the Act permits a service manager to exercise natural person powers in regard to any matter relating to the delivery agent's powers and duties under the Act, subject to the restrictions or conditions imposed in the Act and in the designation as service manager;

AND WHEREAS the City and the County entered into an agreement dated January 1, 2013 for the apportionment of costs for Child Care Services and that such agreement expires on December 31, 2017;

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 and the County desire to enter into an agreement to delegate to the County, as agent for the City, the delivery of Child Care Services in 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.

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. “**Base Allocation**” means an annual amount of funding from the Provincial Payment to be provided to County, as determined by the Designated Service

Manager, which is to be adjusted as set out in paragraphs 6-8 of this Agreement.

- c. **"Business Day"** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario;
- d. **"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;
- e. **"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;
- f. **"Costs"** means the costs as prescribed in the Act and the regulations;
- g. **"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;
- h. **"Deemed Arbitration Date"** means December 31, 2025;
- i. **"Designated Service Manager"** means the City as designated by the Province under the Act and O. Reg. 138/15;
- j. **"Child Care Services"** means the programs and services as described the Act and the regulations, as amended or replaced;
- k. **"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;
- l. **"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;
- m. **"Negotiation Period"** means that period of January 1, 2025 to December 31, 2025;
- n. **"Parties"** means the County and the City collectively and **"Party"** means one of them;
- o. **"Province" or "Provincial"** means the Province of Ontario;
- p. **"Provincial Payment"** means the amount paid by the Province to the Designated Service Manager 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, 2018 and shall expire December 31, 2025.

County as agent for City

- 4. For the term of this Agreement, the County shall be the agent for the Designated Service Manager to manage service delivery of the Child Care Services in 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 and shall manage and provide all Child Care Services in the geographic area of the County of Middlesex excluding the geographic area of the City of London. The Parties further agree and acknowledge, as set out in the recitals of this Agreement, that the City is the Designated Service Manager for the Service Delivery Area with respect to Child Care Services.

Apportionment of Costs

- 5. 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.

Funding

- 6. For components of the Provincial Payment which are not one-time or time-limited, unless expressly directed by the Province, the City shall allocate to the County a 2018 Base Allocation, which shall be based on the County's 2017 Base Allocation, increased

or decreased proportionate to the total 2018 increase or decrease in these components of the Provincial Payment to the City as Designated Service Manager. This shall not preclude the City from providing an additional allotment to the County through a mutual agreement of the City and the County.

7. For components of the Provincial Payment which are not one-time or time-limited, unless expressly directed by the Province, on an annual basis for the calendar years 2019 to 2025, the City shall allocate to the County an annual Base Allocation based on the preceding year's Base Allocation, increased or decreased proportionate to the annual increase or decrease in these components of the Provincial Payment to the City as Designated Service Manager. This shall not preclude the City from providing an additional allotment to the County through a mutual agreement of the City and the County.
8. For components of the Provincial Payment which are one-time or time-limited, such as capital projects, building projects or other one-time or time-limited funding components, the portion of the Provincial Payment allocated to the County shall be determined by the Designated Service Manager considering Child Care service needs in the County and the City but ultimately, by prioritization of all competing Child Care service needs in the Service Delivery Area given funding constraints. The City shall consult with the County concerning the prioritization of all capital, building, and other one-time or time-limited funding requests.
9. With respect to paragraphs 6-7, at the end of each calendar year for the years 2018 to 2025, the City shall reconfirm to the County the amount of that year's Base Allocation in light of any additional allotments which occurred during the year, in order to allow that year's Base Allocation to be referenced by the Parties in correspondence and discussion concerning the succeeding year's Base Allocation and Annual Service Plan, it being noted that any additional allotments may be either one-time or ongoing. After consulting with the County, the City shall determine an appropriate Base Allocation for any funding components that were previously one-time or time-limited but have become a confirmed ongoing component of the Provincial Payment.
10. Should the Provincial funding formula or its criteria change at any time during the term of this Agreement, the Parties hereby agree to review and if required, amend the wording of paragraphs 6-7 to ensure that the funding for Child Care Services for the County are reflected in the Base Allocation and necessary adjustments thereto.
11. For the calendar years 2018 to 2025, 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.
12. For the term of this Agreement, the County shall take all necessary steps to manage service delivery of 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 Service Manager, to fulfil its duties and obligations to the Province.

Administrative Review

13. 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, which shall hereinafter be referred to as the Management Oversight Committee (the "**MOC**"). 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.
14. 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

15. 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, 1991*, S.O. 1991 c 17, as amended or replaced ("**Arbitration Act**");. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom except on a question of law as set out in the Arbitration Act as set out in section 20(h) herein.

Amendment of Agreement

16. 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.
17. 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

18. The Parties will negotiate a costs apportionment agreement prior to the Deemed Arbitration Date, pursuant to this section.
19. 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, 2025 and March 31, 2025 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 Cost Apportionment Agreement is not approved by the respective Councils of both Parties prior to April 1, 2025, 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 Cost Apportionment Agreement by June 1, 2025, the Parties shall agree to a mediation,

the mediator to be appointed by the Parties by July 1, 2025 and the entire mediation to be completed by November 1, 2025; 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 Cost Apportionment Agreement by December 31, 2025, the Parties shall enter into an arbitration as provided for in this Agreement.

Arbitration

20. 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, 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.
 - 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 or her award, despite section 39 of the Arbitration Act. 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 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.
21. 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

22. 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.
23. 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
Facsimile No.:(519) 434-0638
E-mail: such e-mail address provided by the CAO of the County to the City

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
Facsimile No.:(519) 434-0638
E-mail: such e-mail address provided by the County Clerk to the City

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.: 519-661-2489
Facsimile No.:519-661-5392
E-mail: such e-mail address provided by the City Manager to the County

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.: 519 661-2489
Facsimile No.:519 661-4892
E-mail: such e-mail address provided by the City Clerk to the County

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.

24. 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

25. 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

26. 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

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

Assignment

28. 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 Party.

Covenants

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

Entire Agreement

30. 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

31. In this Agreement:

- 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; and
- d. 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.

Counterparts

32. 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

33. 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

34. 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: _____

**THE CORPORATION OF THE COUNTY OF
MIDDLESEX**

Warden

Kathleen Bunting, County Clerk

Date: _____

THE CORPORATION OF THE CITY OF LONDON

Matt Brown - Mayor

Cathy Saunders - City Clerk