

## AGREEMENT

THIS AGREEMENT is made as of the 8<sup>th</sup> day of August, 2017, by and between the Kenmore-Town of Tonawanda Union Free School District, having an address of 1500 Colvin Boulevard, Tonawanda, New York 14223 (the "District") and the YMCA Buffalo Niagara, Ken-Ton Family Branch, having an address of 535 Belmont Avenue, Kenmore, New York 14223 (hereinafter called the "Provider").

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Provision of Services. Provider agrees to provide the District with the services set forth on Schedule A attached hereto and made a part hereof (the "Services"). To the extent requested by the District, the Services will be provided by the Provider at such time and location as are determined by the District.
2. Payment for Services. The District shall pay the Provider compensation and/or fees as set forth on Schedule B for the performance of the Services.
3. Term/Termination. The term of this Agreement shall be from July 1, 2017 through June 30, 2018 ("Term"). The District may terminate this Agreement by giving thirty (30) days prior written notice to the Provider, and if this Agreement is terminated, no compensation will be due under paragraph 2 of this Agreement for services that were to be rendered during the period following the termination date.
4. Non-Assignability. No party shall assign, transfer or otherwise dispose of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.
5. Indemnification. Provider shall indemnify, defend and hold harmless the District, its Board of Education, officers, administrators, employees, agents and representatives from and against all claims, demands, causes of action, liabilities, losses, damages, judgments, penalties, costs and expenses (including reasonable attorney fees) arising out of the negligent or intentional acts or omissions of Provider, its officers, employees, agents and representatives.
6. Insurance. During the term of this Agreement, Provider shall maintain at its own expense:
  - (i) a commercial general liability policy, including contractual liability coverage, in amounts of 2 million dollars per occurrence, 2 million dollars aggregate, in occurrence coverage form, naming the District as an additional insured. The District shall be an additional insured by ISO additional insured endorsement CG 20 26 or equivalent.
  - (ii) Workers' Compensation and New York State Disability Benefits coverage on all representatives of Provider providing services under this Agreement.
  - (iii) professional liability coverage for each of Provider's employees providing services under this Agreement, in amounts of 2 million dollars per occurrence, 2 million dollars aggregate. In the event that the professional liability policy is a claims-made policy, Provider shall purchase a "tail" policy for a period of no less than five (5) years from the termination date of the foregoing policy. Said "tail" policy shall have policy limits in an amount not less than the primary professional liability policy.
  - (iv) any other insurance legally required to protect its employees, agents, independent contractors, and representatives in the performance of their duties under this Agreement.
  - (v) all insurance policies shall be with an insurance company acceptable to the District and additional insured endorsements shall be on a primary and non-contributory basis.

Provider shall provide the District with certificates of insurance regarding all such coverage, which will provide for 30 days advance written notice to the District prior to any cancellation, non-renewal or material modification of coverage.

7. Amendment. This Agreement shall not be amended, changed, or modified in any manner except by an instrument in writing signed by a duly authorized representative of each of the parties hereto.

8. Relationship Between The Parties. The parties are independent contractors under this Agreement. Neither party shall have the authority to commit the other party to any binding obligation or to execute, on behalf of the other party, any agreement or other document creating legal obligations on the part of the other party, and neither party shall represent to any third party that it has any such authority. Provider, as an independent contractor, and Provider's personnel, shall not be considered employees of the District for any purpose. Provider is solely responsible for scheduling, directing and completing the work and for furnishing equipment, materials, supplies, personnel, and other resources necessary to perform the work. Under no circumstances will Provider or its personnel be eligible or allowed to receive or participate in any benefit available to the District's employees. Provider will be responsible for any federal income taxes due that may be associated with the fee paid to Provider pursuant to this Agreement.

9. Miscellaneous.

- a. Provider shall comply with all federal, state and local laws, rules and regulations that apply to the performance of the work.
- b. Provider represents that it (i) possesses all of the licenses, certifications and permits necessary to perform the work, and (ii) is fully qualified by training and experience to perform the work.
- c. If Provider's personnel are to work with the District's students directly, all such personnel shall receive background checks through State Education procedures, if and as required by law. Proof of State Education Department clearance shall be provided prior to provision of services to the students.
- d. This Agreement shall be governed by and be interpreted in accordance with the laws of the State of New York, disputes shall be venued in a court of competent jurisdiction in Erie County, New York, and the parties hereby consent to personal jurisdiction in any such court.
- e. This written Agreement, including the attached Schedules, contains the entire agreement between the parties. There are no other agreements or understandings concerning the terms of this Agreement.
- f. In the event of conflict between Sections 1 through 9 of this Agreement and the attached Schedules, the provisions of Sections 1 through 9 of this Agreement shall prevail.
- g. This Agreement shall be binding upon and inure to benefit the executors, administrators, heirs, successors and assigns of the respective parties.
- h. Whenever any notice is to be given pursuant to the terms and conditions of this Agreement, such notice shall be in writing and shall be considered given when (i) delivered personally, or (ii) sent by commercial overnight courier with written confirmation of delivery, or (iii) when delivered by United States mail, postage prepaid, certified mail,

return receipt requested, addressed to the location below, or other location as has been designated by notice in accordance with this Agreement:

The District: Kenmore-Town of Tonawanda Union Free School District  
1500 Colvin Boulevard  
Buffalo, New York 14223

Attention: Assistant Superintendent for Finance

Provider: YMCA Buffalo Niagara, Ken-Ton Family Branch  
535 Belmont Avenue  
Kenmore, New York 14223


Attention: Greg Larson, Executive Director

The parties' consent to this Agreement is indicated by their signatures below.

KENMORE-TOWN OF TONAWANDA  
UNION FREE SCHOOL DISTRICT

BY: \_\_\_\_\_  
Authorized Signatory

YMCA Buffalo Niagara, Ken-Ton Family Branch

BY:  \_\_\_\_\_  
Authorized Signatory *Matthew Shriver, CFO*

DATE: 8/1/2017

## **SCHEDULE A**

### **(Services)**

YMCA Buffalo Niagara, Ken-Ton Family Branch, having an address of 535 Belmont Avenue, Kenmore, New York 14223 (hereinafter called the "Provider") and the Kenmore-Town of Tonawanda Union Free School District, having an address of 1500 Colvin Boulevard, Tonawanda, New York 14223 (hereinafter called the "District") agree to cooperate in a Universal Pre-Kindergarten program (hereinafter the "program") during the 2016-17 school year subject to the Regulations of the Commissioner of Education (8 NYCRR 151-1.1 through 151-1.7) and the conditions listed below:

#### **Work to be Performed:**

The Provider will operate a Pre-Kindergarten childcare program according to the standards as set forth for Universal Pre-Kindergarten programs in New York State. The program will begin on September 5, 2017 and end no later than June 19, 2018. It shall provide services for two sessions, five days per week, for two and one-half hours each session. The program will meet at least one hundred eighty (180) days per school year, but shall not be held on or during Kenmore-Tonawanda UFSD vacation or snow days.

The Provider will implement the program components and design as set forth in the New York State Education Department (hereinafter "NYSED") regulations and the Board of Education plan.

#### **The Provider will:**

1. Provide copies and/or share the following information to the District Pre-Kindergarten office:
  - Attendance of children enrolled in the program shall be entered into the student information system on a daily basis.
  - Class lists of children enrolled in the program, updated regularly to ensure District residency and record maintenance.
  - Complete the District's progress report (twice yearly) and provide program information including program data, progress, and finances quarterly.
  - Copies of teaching staff N-3 or N-6 New York State licenses or teacher certificates (if applicable) and child abuse clearance documents.
  - All endorsements to Comprehensive General Liability Insurance policies listing the District as an unrestricted additional insured.
  - Copy of its written discipline policy.
2. Provide appropriate Universal Pre-Kindergarten services to the resident children designated by the District, as specified in this Agreement and the Provider's completed application for the program to the District.
3. Operate the program comprised of two separate sessions per day in up to nine classrooms located throughout the District. Any change to this arrangement must be made in writing by mutual agreement with an amendment to this Agreement.
4. Agree to lease up to nine classrooms from the District under a separate agreement.
5. Ensure the Provider follows the BOE approved Universal Pre-Kindergarten curriculum. In addition, activities shall be regularly planned to ensure that parents are involved in the child's educational program and kept informed of their child's progress, including, but not

limited to parent/staff meetings, weekly parent/staff communication, parent-teacher conferences, and presentations on topics related to early childhood education.

6. Complete a cumulative folder for each Universal child and forward that folder to the Pre-Kindergarten office by the end of June or when a child leaves the program before the end of the year. The cumulative folder should contain all pertinent reports that would be helpful to the receiving Kindergarten teacher, samples of the child's work and any evaluations conducted during the Universal Pre-Kindergarten school year. This would also include DIAL Screening results, Fox in the Box Letters and Numbers Assessments (twice yearly), District Progress Reports (twice yearly), and any other District Universal Pre-Kindergarten assessments. The Provider will also be responsible for completing a final yearly program report to determine the development baseline and progress of children participating in the program, and to determine the effectiveness of the program.
7. Keep on file a copy of each Universal Pre-Kindergarten child's current medical examination and immunization record with the school nurse.
8. Verify that it operates the program according to the approved school calendar.
9. Verify that the Universal Pre-Kindergarten program will provide a nutritional meal/or snack to ensure that the nutritional needs of the children are met.
10. Be responsible to provide instructional supplies including, but not limited to, general classroom supplies, outdoor equipment, gross motor equipment, screening instruments, and program materials/enhancements that are aligned with Board of Education approved curriculum.
11. Meet staff qualification requirements:
  - Teachers must hold a NYSED license or certificate valid for service in early childhood grades or for students with disabilities valid for service in early childhood grades pursuant to Part 80 of the Commissioner's regulations. If any teacher in the Provider's program does not have such a license or certificate, each such teacher must have a bachelor's degree in early childhood education or a related field, a written plan to obtain certification within five (5) years must be submitted to the District office, and a certified on-site education director is required until all teachers at the site are certified.
  - Teaching assistants providing instructional support in the classroom shall meet the qualifications pursuant to Part 80 of the Commissioner's regulations.
  - Teacher aides must have a high school diploma.
12. Meet class size requirements:
  - Maximum class size is 20 children.
  - For class sizes of 19 and 20 children, one teacher and two (2) aides or assistants (or a combination of an aide and an assistant).
  - For class sizes of 18 children or less, one teacher and one (1) aide or assistant.
13. Meet staff development requirements specified by the Commissioner's Regulations.
  - Evaluations, training and meetings will comply with the District's professional development expectations and calendar.

- Attend regular staff development opportunities that will be mandatory for Universal Pre-Kindergarten staff.
- Evaluations of the Universal Pre-Kindergarten staff will be conducted annually by an appropriate administrator of the District, or Provider, agreed upon by the two parties.

The District will:

1. Collaborate with the Provider to provide in-service training for all Universal Pre-Kindergarten staff on a regular basis that will support implementation of the Universal Pre-Kindergarten program including curriculum, instruction, planning and assessment.
2. Provide a District calendar.
3. Appoint appropriate administrator(s) and evaluate program development and implementation. These administrator(s) will meet with the Provider's director on an ongoing basis to problem-solve issues and modify program models as appropriate, as well as examine the progress of the children so goals and objectives are met.
4. Children will be selected by the District through a lottery and applicant process that will be advertised in newspapers, posted at public buildings, available on the district website, and through mailings to parents.
5. Provide nursing services for Universal Pre-Kindergarten students served by this program.

General Conditions:

1. The District maintains the right to have a Pre-Kindergarten administrator or its designee visit eligible programs to view classes in operation and to review required paperwork that is kept on file regarding residency, attendance, and other programmatic areas.
2. This Agreement may be terminated or changed by the District upon thirty (30) days prior written notice to the Provider. Upon termination of the program, all District supplies and equipment must be returned within 30 days to the Pre-Kindergarten office of the District.
3. Neither party has any authority to enter into any agreement, assume any obligations, or make any warranties or representations on behalf of the other.
4. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as a waiver of a subsequent breach or violation.
5. The Provider shall deliver to the District, within twenty (20) days of the date of execution of this contract, certified copies of endorsements to each of the insurance policies required under this contract, which name the District, including all of its agents and employees, as Additional Insureds under each required insurance policy. The coverage afforded under each insurance policy obtained by the eligible agency pursuant to this contract shall be primary to any valid and collectible insurance carried separately by the District; any insurance policies issued to the District shall only apply, if at all, as excess insurance. Further, all policies shall expressly provide that no less than thirty (30) days' prior written notice shall be given the District in the event of material alteration, cancellation, renewal, or expiration of the coverage afforded by such policy.
6. In no event shall any failure of the Provider to receive and deliver to the District certified copies of the Additional Insured endorsements required under this contract, or to demand receipt of the certified copies of those endorsements prior to the Provider commencing any work under this contract, be construed as a waiver by the District of the Provider's

obligations to obtain the required insurance on behalf of the District. The obligation to procure and maintain any insurance required under this contract is a separate responsibility of the Provider and independent of its duty to furnish a certified copy of each Additional Insured endorsement to each such insurance policy.

7. If the Provider fails to purchase and maintain, on the District's behalf, or fails to cause to be purchased and maintained, any insurance required under this contract, the District may, but shall not be obligated to, on five (5) days' written notice to the Provider, purchase such insurance on behalf of the Provider and shall be reimbursed by the Provider upon demand.
8. When any required insurance under this contract shall expire due to the attainment of a normal expiration date or renewal date, the Provider shall supply the District with certified copies of all renewed endorsements identifying the District as an Additional Insured on each subject insurance policy, which clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. All renewal and replacement insurance policies shall be in form and substance satisfactory to the District and written by an insurance carrier authorized to do business in New York.
9. In the event that the District's insurer(s) make(s) any payment toward any loss covered under any policy of insurance that the Provider is required to procure under this contract, the District's insurer(s) shall be subrogated to the Provider's rights of recovery against any person or organization including, but not limited to, the Provider's insurer(s), and the Provider shall execute and deliver all instruments, papers and whatever else is necessary to secure those rights. The Provider shall do nothing after the payment of any damages to prejudice those rights.
10. This instrument contains the entire Agreement of the parties. No modification shall be binding upon either party unless it is in writing and signed by both parties.
11. This contract is contingent upon the availability and receipt of State funding.

## **SCHEDULE B**

### **(Compensation/Fees)**

YMCA Buffalo Niagara, Ken-Ton Family Branch, having an address of 535 Belmont Avenue, Kenmore, New York 14223 (hereinafter called the "Provider") and the Kenmore-Town of Tonawanda Union Free School District, having an address of 1500 Colvin Boulevard, Tonawanda, New York 14223 (hereinafter called the "District") agree to cooperate in a Universal Pre-Kindergarten program (hereinafter the "program") during the 2017-2018 school year subject to the Regulations of the Commissioner of Education (8 NYCRR 151-1.1 through 151-1.7) and the conditions listed below:

1. As compensation for its services in connection with the 2017-2018 Universal Pre-Kindergarten Program, the District shall pay the Provider \$810,000 provided that enrollment is between 251-324 students as reported on the New York State Basic Education Data System in October. If enrollment is between 231-250 students, the District will pay the Provider \$780,000. If enrollment is below 231 students, the parties agree to meet to restructure the program and the financial compensation accordingly. The Provider shall bill the district four times over the course of the school year. The Provider and the District agree that the Provider shall bill the District in four installments on or after the first day of September, 2017; December, 2017; March, 2018; and June, 2018.
2. The Provider understands that this entire contract is subject to the receipt of UPK grant funds by Kenmore-Tonawanda UFSD from the New York State Education Department.