

INTERLOCAL AGREEMENT

BETWEEN THE

**DEPARTMENT OF HUMAN SERVICES**  
(a principal department of the Executive Branch of the State of Michigan)

AND

**MOTT COMMUNITY COLLEGE**  
(a community college district of the State of Michigan)

CREATING THE

**MICHIGAN HOME BASED CHILD CARE COUNCIL**  
(a Michigan public body corporate)

This AGREEMENT is entered into pursuant to authority granted under Section 28 of Article 7 of the Michigan Constitution of 1963 and the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, between the DEPARTMENT OF HUMAN SERVICES, a principal department of the State of Michigan, and MOTT COMMUNITY COLLEGE, a Michigan public body corporate established under the Community College Act, 1966 PA 331, MCL 389.1 to 389.195, for the purpose of establishing and creating the MICHIGAN HOME BASED CHILD CARE COUNCIL, a separate legal entity and public body corporate to administer and execute the purposes and objectives of this Agreement.

### RECITALS

A. The State of Michigan has made a commitment to increase the quality of early childhood education and development by creating Project Great Start and the Early Childhood Investment Corporation. Quality child care plays a crucial role in child development by allowing parents to work and laying the foundation for children's success in school and later life. The State of Michigan relies heavily on home based child care settings, with approximately 50,000 home based child care homes and providers regulated or subsidized by the State. Michigan, however, has a shortage of licensed daycare spaces and a turnover rate of approximately 40% per year in family day care homes. A successful system of providing child care in Michigan would set standards for child care workers, offer specialized training in child development to caregivers, and provide parents with a stable home based child care industry that can meet their demands for qualified child care providers in their community.

B. The Department of Human Services has the power, privilege and authority to license, regulate, assist, train, and transmit subsidy payments to home based child care providers and perform various early childhood development activities. The Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.21; 1973 PA 116, MCL 722.111 to 722.128; 1997 MR 8, R 400.5001 to 400.5015; 2005 MR 19, R 400.1901 to 400.1963. Similarly, Mott Community College has the power, privilege, and authority to establish vocational educational programs for child care providers, employ child care providers, and perform various early childhood development and child care activities. Section 7 of Article 8 of the Michigan Constitution of 1963; MCL 389.121(b); MCL 389.121(c); MCL 389.125(d); MCL 389.125(f); MCL 389.103(2); MCL 389.124(b).

C. The system of providing quality child care throughout the State of Michigan can be improved further by enhanced cooperation between the Department of Human Services and Mott Community College. Section 28 of Article 7 of the Michigan Constitution of 1963 and the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, encourage cooperation among public agencies and permit a public agency to exercise jointly with any other public agency any power, privilege, or authority that the public agencies share in common and which each might exercise separately. The Department of Human Services and Mott Community College are "public agencies" as that term is defined in the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512. The Department of Human Services and Mott Community College desire to further coordinate, enhance, and improve the delivery of quality child care by home based child care providers.

D. It is the intent of the Department of Human Services and Mott Community College to utilize existing constitutional and statutory authority to establish a mechanism for improving the quality of child care provided in home settings, raising standards and improving training for home based child care providers, and stabilizing the home based child care industry by ensuring that parents have the ability to choose for their children quality child care providers who are licensed or registered according to quality standards and given access to consistent training programs. The Department of Human Services and Mott Community College intend to achieve their goal by creating an intergovernmental legal entity named the Michigan Home Based Child Care Council as a separate legal entity and as a public body corporate under the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512. The Parties do not intend to transfer a program or function to the Council if prohibited by the Michigan Constitution of 1963 or other applicable law.

Accordingly, the Department of Human Services and Mott Community College agree to the following terms and conditions:

## ARTICLE I DEFINITIONS

As used in this Agreement:

**Section 1.01.** "Act 7" means the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

**Section 1.02.** "Agreement" means this Interlocal Agreement between the Department of Human Services and Mott Community College.

**Section 1.03.** "Budget Act" means the Uniform Budgeting and Accounting Act, 1968 PA 2, MCL 141.421 to 141.440a.

**Section 1.04.** "Council" means the Michigan Home Based Child Care Council, a public body corporate created under this Agreement pursuant to Act 7.

**Section 1.05.** "Council Board" means the board of directors of the Council created under Article VI.

**Section 1.06.** "Department" means the Department of Human Services, a principal department of the executive branch of the State of Michigan, created as the Department of Social Services by Section 450 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.550; renamed the Family Independence Agency by 1995 PA 223, MCL 400.1; and renamed the Department of Human Services by Executive Order 2004-38, MCL 400.226. The Department has determined that entering into this Agreement is necessary or appropriate to assist the Department in carrying out its duties and functions, including licensing, regulating, assisting, providing training for, and administering subsidy payments to eligible home based child care providers.

**Section 1.07.** "Director" means the Director of the Department of Human Services.

**Section 1.08.** "Effective Date" means the date upon which all of the following are satisfied, as provided under Section 10 of Act 7:

- (a) The Agreement is approved by the Governor.
- (b) The Agreement is filed with the County Clerk of a county of the State as required by Act 7.
- (c) The Agreement is filed with the Secretary of State.

**Section 1.09.** "Executive Director" means the executive director of the Council created under Section 4.09 of the Agreement.

**Section 1.10.** "Fiscal Year" means the fiscal year of the Council, which shall begin on October 1 of each year and end on the following September 30.

**Section 1.11.** "FOIA" means the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

**Section 1.12.** "OMA" means the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.273.

**Section 1.13.** "Party" or "Parties" means either individually or collectively as applicable, each of the signatories to this Agreement.

**Section 1.14.** "Person" means an individual, authority, limited-liability company, partnership, firm, corporation, organization, association, joint venture, trust, governmental entity, Public Agency, or other legal entity.

**Section 1.15.** "Provider" means a provider of home based child care services (a) who is licensed or registered by the Department under 1973 PA 116, MCL 722.111 to 722.128 or 2005 MR 19, R 400.1901 to R 400.1963; or (b) who receives payments for providing home-based child care services through the Department, including payments from funds administered in Michigan by the Department under the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.21, or 1997 MR 8, R 400.5001 to 400.5015, or any successor child care assistance or subsidy program.

**Section 1.16.** "Public Agency" means, as defined in part in Act 7, a political subdivision of this state or of another state of the United States or of Canada, including, but not limited to, a state government, a county, city, village, township, charter township, school district, single or multipurpose special district, or single or multipurpose public authority; a provincial government, metropolitan government, borough, or other political subdivision of Canada; an agency of the United States government; or a similar entity of any other states of the United States and of Canada. "Public Agency" includes the Parties.

**Section 1.17.** "Revised Municipal Finance Act" or "Act 34" means the Revised Municipal Finance Act, 2001 PA 34, MCL 141.2101 to 141.2821.

**Section 1.18.** "State" means the State of Michigan.

**Section 1.19.** "Transfer Agreement" means a written contract entered into under the authority of this Agreement between a Party and the Council establishing the terms and conditions of the Party's transfer of program functions and/or funding to the Council. The Transfer Agreement may include the Council's related performance objectives and remedies for failure to meet such objectives. Transfer of State programs, functions and/or funding to the Council shall comply with all applicable requirements under state and federal law.

## ARTICLE II PURPOSE

**Section 2.01. Purpose.** The purpose of this Agreement is to create and empower the Council to implement the powers, privileges, and authority of each of the Parties with respect to the subject matter of the Agreement, including but not limited to coordinating the provision of effective, efficient, and stable child care, offering training to Providers, and providing public sector payments to Providers. It is not the purpose of this Agreement to limit the selection process of child care providers by families; families will continue to select and retain the provider who best suits their needs. The Council shall work to support Providers through a variety of methods aimed at encouraging competence, achieving quality services, and improving Provider retention through improved job satisfaction. The Council shall also make recommendation to public agencies, public bodies, or public officials regarding regulations, legislation, appropriations, and programs in regards to the system of providing child care in Michigan.

**Section 2.02. Programs and Functions.** The Council shall endeavor to carry out the common powers, privileges, and authorities of the Parties, including, but not limited to, all of the following:

- (a). Providing certain employer-related services, such as those specified in Article VI.
- (b). Seeking to facilitate the consistent provision of child care for families who elect to employ individual Providers.
- (c). Facilitating and coordinating training programs to assist Providers in the performance of child care services.
- (d). Developing recruitment and retention programs to expand the pool of Providers that may provide child care.
- (e). Conducting a needs assessment and feasibility study for a substitute Provider program that may facilitate the provision of routine, emergency, and respite referrals for the provision of child care, in accordance with authorizations of payers of services, through a pool of back-up Providers.
- (f). Implementing a substitute Provider program if the Council determines that it is necessary and feasible.
- (g). Encouraging and soliciting private and public sector involvement, support, and financing for the Council.
- (h). Developing methods of ongoing communication and information sharing with Providers and families that supports and facilitates a positive relationship between Providers and families.

(i). Assisting Providers with addressing barriers to employment by supplying them with information, referrals, or assisting with access to services supportive to them such as training or transportation.

(j). Facilitating compliance with applicable federal and state regulations and policies, or those of private sector payers.

(k). Facilitating and coordinating advanced training for Providers.

(l). Facilitating and coordinating mentoring for Providers with the goal of supporting successful Family-Provider relationships, including a strong Family-employer role.

**ARTICLE III**  
**CREATION OF THE COUNCIL**

**Section 3.01. Creation of and Legal Status of Council.** The Council is established as a separate legal entity to be known as the "Michigan Home Based Child Care Council" for the purpose of administering and executing this Agreement. The Council shall be a public body corporate having the powers granted to the Council under this Agreement.

**Section 3.02. Principal Office.** The principal office of the Council shall be at a location determined by the Council Board.

**Section 3.03. Title to Council Assets.** Except as otherwise provided in this Agreement, the Council shall have exclusive title to all of its property and no Party shall have an ownership interest in Council property.

**Section 3.04. Tax-exempt Status.** The Parties intend the activities of the Council to be governmental functions carried out by an instrumentality or political subdivision of government as described in Section 115 of Internal Revenue Code of 1986, 26 USC 115, or any corresponding provisions of any future tax code. The Parties also intend the activities of the Council to be governmental functions carried out by a political subdivision of this State, exempt to the extent provided under Michigan law from taxation by this State, including, but not limited to, the single business tax under the Single Business Tax Act, 1975 PA 227, MCL 208.1 to 208.145, and property taxes under the General Property Tax Act, 1893 PA 206, MCL 211.1 to 211.157 or corresponding provisions of future State tax laws.

**Section 3.05. Compliance with Law.** The Council shall comply with all federal and state laws, rules, regulations, and orders applicable to this Agreement, as well as with any duties or obligations that may from time to time be transferred to the Council from any of the Parties.

**Section 3.06. Relationship of Parties.** The Parties agree that no Party shall be responsible, in whole or in part, for the acts of the employees, agents, and servants of any other Party, whether acting separately or in conjunction with the implementation of this Agreement. The Parties shall only be bound and obligated under this Agreement as expressly agreed to by each Party. No Party may obligate any other Party. No employee, agent, or servant of the Council or Mott Community College shall be or shall be deemed to be an employee, agent, or servant of the State for any reason.

**Section 3.07. No Third-Party Beneficiaries.** This Agreement does not create in any Person, other than a Party, and is not intended to create by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit.



**ARTICLE IV**  
**COUNCIL BOARD AND EXECUTIVE DIRECTOR**

**Section 4.01. Council Board Composition.** The Council shall be governed by the Council Board, a board of directors that shall be appointed within thirty (30) calendar days of the Effective Date. The Council Board shall consist of the following members:

(a). Four (4) members appointed by the Governor of this State. Of these, not less than two (2) shall be child care advocates or current consumers of child care services. These members shall serve at the pleasure of the Governor and may be removed at his or her will.

(b). Two (2) members appointed by the Board of Trustees of Mott Community College. Of these members, not less than one (1) shall be a child care advocate or current consumer of child care services. These members shall serve at the pleasure of the Board of Trustees of Mott Community College and may be removed at the will of the Board of Trustees of Mott Community College.

(c). The Director of the Department or his or her designated representative from within the Department.

**Section 4.02. Term of Office.** Except as otherwise provided under this paragraph, the members of the Council Board appointed by the Governor and by the governing body of each Party shall serve for a term of four (4) years. To provide for staggered terms, of the members initially appointed by the Governor, one (1) member shall be appointed for a term of four (4) years, one (1) member shall be appointed for a term of three (3) years, one (1) member shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of one (1) year. Of the members initially appointed by the Board of Trustees of Mott Community College, one (1) member shall be appointed for a term of four (4) years, and one (1) member shall be appointed for a term of two (2) years. After the expiration of the initial terms, members shall be appointed for terms of four (4) years.

**Section 4.03. Vacancies.** A vacancy among the members of the Council Board appointed by the Governor, caused by the death, resignation, or removal of a Council Board member shall be filled by the Governor in the same manner as the original appointment for the balance of the unexpired term. A vacancy among the members of the Council Board appointed by the Board of Trustees of Mott Community College shall be filled by whatever manner the Board of Trustees of Mott Community College chooses.

**Section 4.04. Meetings.** The Council Board shall conduct its first meeting no later than forty-five (45) days calendar days after the appointment of the Council Board, provided that a quorum of the Council Board has been appointed. The Council Board shall meet at least annually and hold such other meetings as it may determine at the place, date, and time as the Council Board shall determine. All meetings of the Council Board shall comply with the OMA. Public notice of the time, date, and place of the meetings shall be given in the manner required by the OMA.

**Section 4.05. Quorum and Voting.** A majority of the Council Board members appointed and serving shall constitute a quorum for the transaction of business. The Council

Board shall act by a majority vote at a meeting at which a quorum is present. A quorum shall be necessary for the transaction of business by the Council Board. Presence in person for both quorum and voting may include simultaneous electronic communication, as provided by the Council Board in its bylaws, rules, and procedures.

**Section 4.06. Council Board Responsibilities.** The Council Board shall do all of the following by a majority vote of its members appointed and serving:

- (a). Adopt bylaws, rules, and procedures governing the Council Board and its actions and meetings. Initial bylaws shall be adopted within six (6) months of the first meeting of the Council Board.
- (b). Elect officers. Initial officers shall be appointed within thirty (30) days of the first meeting of the Council Board.
- (c). Select and retain an Executive Director as provided under Section 4.09.
- (d). Approve policies to implement day-to-day operation of the Council, including policies governing any staff of the Council.
- (e). Provide for a system of accounts to conform to a uniform system required by law, and review and approve the Council's budget to assure that the budgets are approved and administered in accordance with the Budget Act.
- (f). Provide for an annual audit in accordance with the Budget Act.
- (g). Adopt personnel policies and procedures.
- (h). Adopt policies and procedures for contracting and procurement.
- (i). Adopt an investment policy in accordance with 1943 PA 20, MCL 129.91 to 129.96, and establish banking arrangements for the Council.
- (j). Take such other actions and steps as shall be necessary or advisable to accomplish the purposes of this Agreement.
- (k). Make a written Annual Report to the Parties and otherwise assure that the Parties are kept up to date with the activities of the Council.

**Section 4.07. Fiduciary Duty.** The members of the Council Board and the Executive Director are under a fiduciary duty to conduct the activities and affairs of the Council in the best interests of the Council, including the safekeeping and use of all Council monies and assets. The members of the Council Board shall discharge their duties in good faith; with the care an ordinarily prudent individual in a like position would exercise under similar circumstances.

**Section 4.08. Compensation.** The members of the Council Board shall receive no compensation for the performance of their duties. A Council Board member may engage in private or public employment, or in a profession or business, except to the extent prohibited by

law. The Council may reimburse members of the Council Board for actual and necessary expenses incurred (for example, travel and meals) in the discharge of their official duties as provided by the Council Board, particularly to ensure that any consumers or providers of child care on the board have the opportunity to participate fully.

**Section 4.09. Executive Director.** Not later than six (6) months after the first meeting of the Council Board, the Council Board shall select and retain an Executive Director. The Executive Director shall administer the Council in accordance with the operating budget adopted by the Council Board, general policy guidelines established by the Council Board, other applicable governmental procedures and policies, and this Agreement. The Executive Director shall be responsible for the day-to-day operations of the Council; the control, management, and oversight of the Council's functions; and supervision of all Council employees. All terms and conditions of the Executive Director's employment shall be specified in a written contract between the Executive Director and the Council Board. The Executive Director shall serve at the pleasure of the Council Board.

**Section 4.10. Ethics and Conflicts of Interest.** The Council Board shall adopt ethics policies governing the conduct of Council Board members, officers, appointees, and employees. The policies shall be no less stringent than those provided for public officers and employees under 1973 PA 196, MCL 15.341 to 15.348. Members of the Council Board and officers, appointees, and employees of the Council shall be deemed to be public servants for the purposes of 1968 PA 317, MCL 15.321 to 15.330, and are subject to any other applicable law with respect to conflicts of interest. The Council Board shall establish policies and procedures requiring periodic disclosure of relationships that may give rise to conflicts of interest.

**ARTICLE V**  
**GENERAL POWERS OF COUNCIL**

**Section 5.01. Powers Granted Under Act 7.** In carrying out its purposes, the Council may perform, or perform with any Person, as applicable, any power, privilege or authority that the Parties share in common and that each might exercise separately to the fullest extent permitted under by Act 7 and in accordance with applicable law. The Council shall not have the power to bind a Party, unless otherwise agreed to by the Party. The enumeration of a power in this Agreement shall not be construed as a limitation upon the powers of the Council or a Party, and is in addition to any powers authorized by law. Among other things, the Council shall

- (a). Make or enter into contracts, including, but not limited to, contracts for the provision of legal or accounting services.
- (b). Employ agencies or employees.
- (c). Acquire, construct, manage, maintain, or operate buildings, works, or improvements.
- (d). Acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property, including, but not limited to, equipment and office space.
- (e). Incur debts, liabilities, or obligations that, except as expressly authorized by the Parties, do not constitute the debts, liabilities, or obligations of any of the Parties to the extent authorized under Act 7 or other applicable law.
- (f). Cooperate with a Public Agency, an agency or instrumentality of the Public Agency, or another legal or administrative entity created by the Public Agency under Act 7.
- (g). Make loans from the proceeds of gifts, grants, assistance funds, or bequests.
- (h). Form other entities necessary to further the purposes of the Agreement.
- (i). Sue and be sued in the name of the Council.

**Section 5.02. Additional Powers Granted Under Act 7.** The Council shall also have the powers to:

- (a). Employ, appoint, engage, compensate, transfer, or discharge necessary personnel, subject to any provisions of applicable civil service and merit systems and Act 7.
- (b). Fix and collect charges, rates, rents, fares, fees, loan repayments, loan interest rates, or other charges on loans.
- (c). Promulgate necessary rules and regulations and provide for their enforcement by or with the assistance of the Parties to accomplish the purposes of this Agreement.

(d). Accept gifts, grants, assistance funds, or bequests and use the same for the purposes of this Agreement. The Council may apply for and accept grants, loans, or contributions from any source authorized by law. The Council may do anything within its power in accordance with applicable law to secure the grants, loans, or other contributions.

(e). Make claims for federal or state aid payable to a Party on account of the execution of this Agreement.

(f). Respond for any liabilities that might be incurred through performance of this Agreement and insure against any such liability.

(g). Adjudicate disputes or disagreements, the effects of the failure of a Party to pay its share of costs and expenses, and the rights of the other Parties in such cases.

(h). Engage auditors to perform independent audits of the financial statements and other activities of the Council.

(i). Invest surplus funds or proceeds of grants, gifts, or bequests and adopt an investment policy in connection with the funds or proceeds.

(j). Employ legal, financial, and technical experts, other officers, agents, or employees, and accept voluntary provision of such services and function from donor individuals and entities.

(k). Study, develop, and prepare the reports or plans the Council considers necessary to further the purposes of this Agreement and monitor and evaluate performance under this Agreement.

(l). Purchase and maintain insurance to protect against losses incurred or realized by the Council in the discharge of its functions.

(m). Purchase and maintain insurance to protect members of the Council Board or officers or employees of the Council from personal loss or accountability from liability asserted by any Person for any acts or omissions of the Council.

(n). Secure surety bonds for officers, employees, or contractors of the Council designated by the Council to directly handle and process state, federal, and other funds received by the Council.

**Section 5.03. Bonds or Notes; Limitation.** The Council shall not issue any type of bond in its own name except as authorized by Act 7. The Council shall not possess the power to in any way indebted a governmental unit participating in this Agreement. The Council shall not borrow money or issue bonds or notes for a sum that, together with the total outstanding bonded indebtedness of the entity, exceeds 2 mills of the taxable value of the taxable property within the local governmental units participating in the interlocal agreement as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a. Bonds or notes issued by the Council are the debt of the Council and not of the Parties. Bonds or notes issued by the Council are for an essential public and governmental purpose. Pursuant to Section 7(7) of Act 7, bonds

or notes, together with the interest on the bonds or notes and income from the bonds or notes, are exempt from all taxes. Bonds or notes issued by the Council are subject to Act 34 as required by Section 7(8) of Act 7.

**Section 5.04. Tax Limitation.** Pursuant to Section 7(3) of Act 7, the Council shall not levy any type of tax within the boundaries of any Party.

**Section 5.05. Limitation on Political Activities.** The Council shall not spend any public funds on political activities. This section is not intended to prohibit the Council from engaging in activities authorized under the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 to 169.282.

**Section 5.06. No Waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any Party of any governmental immunity provided under Act 7 or other law.

**Section 5.07. Non-Discrimination.** The Council shall comply with all applicable law prohibiting discrimination. The Council shall not fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The Council shall not limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The Council shall not provide services in a manner that discriminates against a person with respect to employment, compensation, or a term, condition, or privilege of employment because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to receive services from the Council.

**ARTICLE VI**  
**SPECIFIC POWERS OF THE COUNCIL**

**Section 6.01. Provision of Child Care Services.** The Council shall continually and diligently endeavor to encourage the provision of quality child care services and may do so through organized programs and the development of mechanisms to provide for the delivery of child care services.

**Section 6.02. Training and Support of Providers.** The Council may encourage, facilitate, support, and develop training programs for Providers and facilitate compliance with any state-required training; develop peer mentoring programs for providers; develop methods of on-going communication and information sharing among providers; propose recruitment and retention programs to maintain and expand the pool of Providers; explore and address barriers to employment for Providers; conduct a needs assessment and feasibility study for a substitute provider program and implement any resulting program; and facilitate compliance with applicable federal or state regulations and policies, or those of private sector payers.

**Section 6.03. Participation in federal and state child care funding programs.** The Council may, consistent with state and federal law, be authorized to administer funds currently administered by the Department for services rendered by Providers under publicly funded programs, consistent with the purposes set forth in Article II. The administration of federal and state programs does not alter or amend existing grant agreements with the federal government or other granting agencies.

**Section 6.04. Family Selection of Providers.** The relationship between the Council and its Providers shall preserve the family's exclusive right to select and retain the Provider who best suits their needs.

**Section 6.05. Subsidy Methodologies and Rates.** The Council shall examine state child care market rate survey methodology, provider payment methods, schedules and child development and care subsidy rates.

**Section 6.06. Licensing and Regulation Recommendations.** The Council may propose or review and recommend changes in licensing policies, regulations, or statutes that would improve the quality of child care provided in the State or the efficiency of administration of child care programs to the Department, any appropriate State agency, or the Michigan Legislature.

**Section 6.07. Contracting.** The Council may enter into agreements, contracts, or arrangements with a governmental entity or other persons necessary or appropriate to assist the Council in carrying out its duties and functions under this Agreement.

**Section 6.08. Transfer of Programs or Functions.** If a Party transfers a program or functions to the Council, the Party shall do so in accordance with the terms of a Transfer Agreement. Any monies transferred to the Council by a Party shall be used for the programs, functions, and responsibilities established in the transfer agreement and in accordance with this Agreement. When a Party has a legal obligation to fund a transferred program, function, obligation, or responsibility, the Party's funding obligation shall be deemed satisfied upon the

transfer of the requisite funding to the Council, in accordance with the terms of a transfer agreement.

**Section 6.09. Funds, Gifts, Grants, Bequests, Donations.** The Council may receive local, State, and federal funds and may accept gifts, grants, bequests, and other donations to accomplish its purposes. The Council may encourage and solicit private, philanthropic, and public sector funding. Funds or property accepted shall be used as directed by the donor in accordance with applicable law, rules, and procedures. The Council may participate with the state in seeking and enhancing federal funding for the provision of child care services. Funds to support the operation of the Council may be provided by the Department. Participants shall not be obligated under this agreement to provide any support for the operation of the Council.

**Section 6.10. Collective Bargaining.** The Council shall have the right to bargain collectively and enter into agreements with labor organizations. The Council shall fulfill its responsibilities as a public employer subject to 1947 PA 336, MCL 423.201 to 423.217.

**Section 6.11. Municipal Employee Retirement System.** To the extent permitted under Michigan law, the Council Board may elect to become a participating municipality pursuant to Section 2c(2) of the Municipal Employees Retirement Act of 1984, 1984 PA 427, MCL 38.1501 to 38.1558.

**Section 6.12. Benefits.** To the extent permitted under Michigan law, the Council Board may provide benefits, including but not limited to health care coverage.

**Section 6.13. Intergovernmental Activities.** The Council may form and own other legal entities to further the purposes of this Agreement. The Council may cooperate with a Public Agency, an instrumentality of that Public Agency, or other legal or administrative entity created under Act 7.

**Section 6.14. No waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any Party of any governmental immunity provided under Act 7 or other law.



**ARTICLE VII**  
**BOOKS, RECORDS, AND FINANCES**

**Section 7.01. Council Records.** The Council shall keep and maintain at the principal office of the Council, all documents and records of the Council. The records of the Council, which shall be available to the Parties, shall include, but not be limited to, a copy of this Agreement along with any amendments to the Agreement. The records and documents shall be maintained until the termination of this Agreement and shall be returned to any successor entity or, if none, to the Department or any successor agency of the Department.

**Section 7.02. Financial Statements and Reports.** The Council shall cause to be prepared, at Council expense, audited financial statements (balance sheet, statement of revenue and expense, statement of cash flows, and changes in fund balance) prepared on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm. A copy of the annual financial statement and report shall be filed with the Michigan Department of Treasury, or any successor agency, and shall be made available to each of the Parties.

**Section 7.03 Audits.** The Council shall provide for the conduct of audits in accordance with section 6 to 13 of the Budget Act, which shall be made available at the request of any Party. The Council Board shall establish a dedicated audit committee of the Council Board for the purpose of overseeing the accounting and financial reporting processes of the Council and audits of its financial statements. The Council shall establish specific duties and obligations of the audit committee and standards and qualifications for membership on the audit committee. The Council Board may require at least one member to be specifically knowledgeable about financial reports. The audit committee shall recommend to the Council Board implementation of appropriate analogous provisions of the Sarbanes-Oxley Act, 15 USC 7201 to 7266.

**Section 7.04. Freedom of Information Act.** The Council shall be subject to and comply with the FOIA.

**Section 7.05. Uniform Budgeting and Accounting Act.** The Council shall be subject to and comply with the Budget Act. The Executive Director annually shall prepare and the Council Board shall approve a budget for the Council for each Fiscal Year. Each budget shall be approved by the September 1<sup>st</sup> immediately preceding the beginning of the Fiscal Year of the Council.

**Section 7.06. Performance Objectives.** Each Fiscal Year, the Executive Director shall prepare objectives for the Council's performance for review and approval by the Council Board.

**Section 7.07. Deposits and Investments.** The Council shall deposit and invest funds of the Council, not otherwise employed in carrying out the purposes of the Council, in accordance with an investment policy established by the Council Board consistent with laws and regulations regarding investment of public funds.

**Section 7.08. Disbursements.** Disbursements of funds shall be in accordance with guidelines established by the Council Board.

**ARTICLE VIII**  
**DURATION OF AGREEMENT**

**Section 8.01. Duration.** This Agreement and the Council shall commence on the Effective Date and shall continue in effect until terminated by joint action of the Parties or withdrawal by a Party under Section 8.02.

**Section 8.02. Withdrawal by Either Party.** Either Party may withdraw from this Agreement upon the following:

(a). The withdrawing Party shall provide in Writing a Notice of Intent to Withdraw to the other Party in accordance with Section 9.01.

(b). Within thirty (30) calendar days of receipt of the Notice of Intent to Withdraw, the Parties must schedule a meeting to discuss, and attempt to resolve any issue of concern.

(c). Notwithstanding Section 8.02(b), if the Parties cannot resolve the issue(s), or the Parties fail to meet, the withdrawing Party shall provide in writing Notice to Terminate the Agreement to the other Party in accordance with Section 9.01. The Agreement shall terminate eleven (11) months after the Notice to Terminate is received by the other Party.

(d). A withdrawing Party may rescind a Notice of Intent to Withdraw or a Notice to Terminate at any time in accordance with Section 9.01.

Nothing in this section shall be construed to prevent the Parties from meeting and conferring at any time, to discuss issues involving the Council.

**Section 8.03. Disposition upon Termination.** As soon as possible after termination of this Agreement, the Council shall finish its affairs as follows:

(a). All of the Council's debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the Council and distribution of its assets shall be paid first; and

(b). The remaining assets, if any, shall be distributed to any successor entity, subject to approval by the Parties and federal and state requirements. In the event that no successor entity exists, the remaining assets shall be distributed to each Party in the same proportion as those assets were provided to the Council.

**ARTICLE IX**  
**MISCELLANEOUS**

**Section 9.01. Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to a Party shall be sent to that Party by first class mail. All such written notices, including any notice of withdrawal under Article VIII, shall be sent to the other Party's signatory to this Agreement, or that signatory's successor. All correspondence shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the United States Postal Service. Any notice of withdrawal shall be sent via certified mail.

**Section 9.02. Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

**Section 9.03. Severability of Provisions.** If any provision of this Agreement, or its application to any Person, Party, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons, Parties, or circumstances is not affected but will be enforced to the extent permitted by law, it being the intent of the Parties to continue to agree to the remaining substantive provisions of this Agreement and to implement the Agreement.

**Section 9.04. Governing Law.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

**Section 9.05. Captions and Headings.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning and or to be interpreted as part of this Agreement.

**Section 9.06. Terminology.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

**Section 9.07. Cross-References.** References in this Agreement to any Article include all sections, subsections, and paragraphs in the Article, unless specifically noted otherwise. References in this Agreement to any Section include all subsections and paragraphs in the Section.

**Section 9.08. Jurisdiction and Venue.** In the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved between the Parties, shall be submitted to

the courts of the State of Michigan. Any and all claims against this State or the Department must be brought and maintained in the Court of Claims in Ingham County notwithstanding Section 6421 of the Revised Judicature Act of 1961, 1961 PA 236, MCL 600.6421.

**Section 9.09. Amendment.** This Agreement may be amended or an alternative form of this Agreement adopted only upon written agreement of the Parties.

**Section 9.10. Effective Date.** This Agreement shall become effective on the Effective Date.

This Agreement is executed by the authorized representatives of the Parties on the date(s) indicated below:

DEPARTMENT OF HUMAN SERVICES,  
a principal department of the State of Michigan

By: \_\_\_\_\_  
Marianne Udow  
Its: Director

Date: \_\_\_\_\_

MOTT COMMUNITY COLLEGE,  
a community college district of the State of Michigan

By: *M. Richard Shaink*  
M. Richard Shaink  
Its: President

Date: 5/23/06

This Agreement is executed by the authorized representatives of the Parties on the date(s) indicated below:

**DEPARTMENT OF HUMAN SERVICES,**  
a principal department of the State of Michigan

By: Marianne Udow  
Marianne Udow  
Its: Director

Date: July 27, 2006

**MOTT COMMUNITY COLLEGE,**  
a community college district of the State of Michigan

By: \_\_\_\_\_  
M. Richard Shaink  
Its: President

Date: \_\_\_\_\_