

Provider Contract # \_\_\_\_\_

Site Name \_\_\_\_\_

## Durham PreK Program

This Contract is hereby entered into on this the 1<sup>st</sup> day of August, 2021, by and between Child Care Services Association, (the “Lead Agency”) and \_\_\_\_\_ (the “Provider”) (referred to collectively as the “Parties”) in order to implement the Durham County PreKindergarten (“Durham PreK”) Program overseen by the County of Durham, North Carolina.

### Contract Documents:

- (a) This Contract consists of this Contract Cover and the following attachments:
  - (1) Attachment A: General Terms and Conditions;
  - (2) Attachment B: Provider Information;
  - (3) Attachment C: The Provider’s Approved Durham PreK Plan (Assurances and Requirements);
  - (4) Attachment D: The Provider’s Approved Durham PreK Plan (Program/Provider and Classroom Information);
  - (5) Attachment E: The Provider’s Approved Durham PreK Budget;
  - (6) Attachment F: The Certification Required by North Carolina Law;
  
- (b) This Contract also consists of the following documents, which are incorporated herein by reference:
  - (1) the State’s NC Pre-K Requirements\*; and
  - (2) the State’s NC Pre-K Fiscal and Contracts Manual\*;

which can be found online at [https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/2/2020-2021\\_NC\\_Pre-K\\_Program\\_Requirements\\_and\\_Guidance\\_September2020.pdf?ver=2020-09-29-114939-613](https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/2/2020-2021_NC_Pre-K_Program_Requirements_and_Guidance_September2020.pdf?ver=2020-09-29-114939-613)

\*With exceptions found in Appendix A - Durham PreK Program Requirements and Guidance and Appendix B – Durham PreK Provider Licensing and Regulatory Compliance Requirements

### 1. Precedence Among Contract Documents:

- (a) In the event of a conflict between or among the terms of the Contract Documents listed in Paragraph 1(a), above, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order in which the documents are listed in Paragraph 1(a), with the first-listed document (the Contract Cover) having the highest precedence and the last-listed document having the lowest precedence.
  
- (b) The Lead Agency has entered into this Contract in order to meet its obligations under a contract between it and the County of Durham, NC. If any of the terms of this Contract conflict with the mandatory terms of the Lead Agency’s contract with the County of Durham, the mandatory terms of the Lead Agency’s contract with the County of Durham, NC shall control.

(c) If any of the terms of this Contract conflict with the mandatory provisions of the:

- (1) the NC Pre-K Requirements; or
- (2) the NC Pre-K Fiscal and Contracts Manual;

that have been posted on the DCDEE website, the mandatory online provisions shall control, with exceptions noted in Appendix A and Appendix B.

(d) If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

**2. Effective Period:** This contract shall be effective on the date entered at the top of page one and shall terminate on June 30, 2022.

**3. Provider's Duties:** The Provider shall:

(a) Provide Durham PreK services as described in:

- (1) Attachments C, D and E;
- (2) the NC Pre-Kindergarten Program Requirements; and
- (3) the NC Pre-K Fiscal and Contract Manual; *(with exceptions noted in Appendix A)*.

(b) Obtain and maintain a fidelity bond covering all Provider employees and subcontractors who handle County funds if the total cost of all contracts between the Provider and the Lead Agency exceed -- or are expected to exceed -- \$100,000 annually.

(c) Submit monthly child information updates (e.g., child exit and enrollment updates) to Durham's Partnership for Children (DPfC) within 5 business days of provider confirmation of change and monthly child attendance data to Child Care Services Association (CCSA) by the CCSA Scholarship attendance calendar. The Provider can meet this requirement by submitting attendance data in a format designed or approved by the Lead Agency and in a manner designated by the Lead Agency.

(d) Report to the Lead Agency (CCSA) any changes in staff or staff qualifications; or other site specific information that requires a change to the Provider's Approved Durham PreK Plan and Provider/Program and Classroom Information by submitting a staff information change form within 5 business of the change in staff and/or teacher education or licensure.

(e) Attend meetings with the Lead Agency as required by the Lead Agency.

(f) Annually review the NC Pre-Kindergarten Program Requirements and Fiscal and Contract Manual and modifications to those documents that reflect the Durham PreK program as noted in Appendix A.

(g) Participate in the county program evaluation, which may include, but is not limited to, individual child assessments, classroom observations, staff surveys and interviews.

(h) Participate in professional development as specified by the Lead Agency.

- (i) Durham PreK directors must achieve and maintain Classroom Assessment Scoring System® (CLASS®) certification. Directors must complete at least two CLASS® observations of Durham PreK classrooms during each contract year.
- (j) If the due date for any report falls on a weekend or holiday, the Provider must submit the report on the last working day before the due date.
- (k) Maintain a written agreement with each Durham PreK Lead and Assistant Teacher. The written agreement, on the Provider's letterhead, should specify:
- Salary - In addition to the amount of the salary, the number of sick days, annual leave and/or personal leave days\* for the time period, the payroll schedule should be included; and
  - Benefits - State the benefits offered in addition to meeting the minimum Durham PreK salary requirements (major medical insurance, retirement, and life insurance) as well as how employees can access the benefits; and
  - Appropriate exemptions from typical center responsibilities (i.e. cleaning classrooms outside of the 6.5 hour school day, providing wrap around care, substituting in non-NC Pre-K classrooms); and
  - Signatures of both the Provider and the Employee.

\* In typical school year, Durham PreK employees are paid for 215 days per school year (prorated for partial program year). The 215 days include 14 teacher workdays, 11 paid holidays and 10 annual leave days.

- (l) Pay all employees the amounts specified, and no later than the dates communicated in the written agreement.
- (m) Ensure lead teachers/teacher assistants that do not meet minimum qualifications be working toward the qualifications for their position. They must make progress by successfully completing a minimum of six documented semester hours per year with a grade of "C" or better.
- (n) Within the daily schedule, allow for an average of 1.5 hours of planning time each day for Durham PreK lead teacher(s) and assistant teacher(s) away from children for teachers to develop classroom plans, participate in one-on-one meetings with their professional development coach, and to complete child assessment notes and individual child plans (this assumes a 6.5 hour instructional day and any additional time dedicated to plan and attend professional development workshops). 2021-2022 Durham PreK Staff Schedule forms that document a teacher's schedule must be completed for all Durham PreK lead and assistant teachers.
- (o) Require all staff working with or in Durham PreK classrooms to be available to work with the assigned professional development or technical assistance (TA) coach.
- (p) Adhere to the Durham Public Schools traditional calendar and NC Pre-K program and weather closures, unless otherwise approved.
- (q) Complete instructional tracking of student attendance as directed by Lead Agency.

- (r) Support recruitment and outreach efforts for the Durham PreK Application (family application process) for rising students at their program and within the community. Providers must participate in at least two outreach/recruitment events within the contract year.

**4. Lead Agency's Duties:** The Lead Agency shall:

- (a) Monitor the Provider's performance.
- (b) Pay the Provider in the manner and in the amounts specified in the Contract Documents.
- (c) The total amount paid by the Lead Agency to the Provider over the term of this Contract shall not exceed \$ 1250.00 per child per month of service. Durham PreK funds do not supplant existing resources for child service.
- (d) Have the power to modify, by contract amendment, the number of classrooms authorized by, and the number of children served under, the Contract in response to changes in the needs of the children in Durham County.

**5. Payment Provisions:**

- (a) All Durham PreK providers must be active with CCSA's Child Care Scholarship Program.
- (b) The Provider must submit a monthly attendance worksheet that will be used as an invoice to the Lead Agency by the attendance due date as indicated on the Attendance Due Date Calendar
- (c) The Provider must submit its attendance worksheet in the format of CCSA's Scholarship Program.
- (d) Payments will be provided by direct deposit at the end of the month that care is provided from September to June. A full month's payment will be provided for the partial month of June. On-time payment is contingent upon timely receipt of completed attendance forms by the date indicated on the attendance worksheet calendar.
- (e) Any parent fees for families that qualify for the Durham PreK sliding scale must be collected from families by the Provider.
- (f) Monthly payments shall not exceed the Provider's monthly Durham PreK Budget. Payment adjustments for previous months may be applied to the Provider's monthly payment.
- (g) Since the fiscal year ends June 30, 2022, the Provider must submit any outstanding attendance claims, as well as June's attendance worksheet, by the June due date in order to receive payment. Once the new fiscal year starts July 1, back-payments cannot be made for any services that occurred on or before June 30.
- (h) If the Provider owes any money to the Lead Agency as a consequence of adjustments, the Provider must return the money to the Lead Agency on or before June 30, 2022.

- (i) The Lead Agency shall have no obligation to pay based on any attendance sheet received after the June due date.
- (j) If this Contract is terminated early, before its scheduled expiration, the Provider shall submit a final payment report to the Lead Agency within 60 days following contract termination and no later than the 30th day of June.
- (k) Funds allocated for use in one county fiscal year but not used during that year will not be carried forward to the next fiscal year.
- (l) The Lead Agency may, at its discretion, withhold payment or make a partial payment pending receipt of documentation, acceptable to the Lead Agency, of the Provider's other sources of financial support.

**6. Contract Administrators:** All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the Lead Agency. The name of and contact information for the Lead Agency is:

<b>The Lead Agency's Contract Administrator</b>
<p><b>Name Title:</b> Linda Chappel, Sr. Vice President for Triangle Area Child Care Resource and Referral</p> <p><b>Lead Agency Name:</b> Child Care Services Association</p> <p><b>Street Address:</b> 1201 S. Briggs Ave., Suite 200</p> <p><b>City, NC Zip:</b> Durham, NC 27703</p> <p><b>Telephone:</b> 919-403-6950 <b>Fax:</b> 919-403-6959</p> <p><b>Email:</b> durhamprekprovider@childcareservices.org</p>

The name of and contact information for the Provider's Contract Administrator are shown in Attachment B. Either Party may change the name of or contact information for its Contract Administrator by giving timely written notice to the other Party.

- 7. Supplementation of Expenditure of Public Funds:** The Provider assures that funds received pursuant to this contract shall be used only to supplement, not to supplant, the total amount of federal, state and local public funds that the Provider otherwise expends for pre-kindergarten services and related programs. Funds received under this contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Provider's total expenditure of other public funds for such services.
- 8. Choice of Law:** The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Provider, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Durham County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Durham County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

9. **Signature Warranty:** The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement.

**In Witness Whereof,** the Provider and the Lead Agency have executed this Contract in duplicate originals, with one original being retained by each party.

Center Name: \_\_\_\_\_

\_\_\_\_\_  
Signature of Owner, Board Chair or other legal authority for center

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name, Title

**Durham PreK Contract Administrator**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Linda Chappel, Sr. Vice President, Child Care Services Association

Printed Name, Title

## ATTACHMENT A

### General Terms and Conditions

#### Relationships of the Parties

1. **Independent Contractor:** The Provider is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Provider represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Lead Agency.
2. **Subcontracting:** The Provider shall not subcontract any of the work contemplated under this Contract.
3. **Assignment:** No assignment of the Provider's obligations or the Provider's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the Lead Agency may (a) forward the Provider's payment checks directly to any person or entity designated by the Provider, or (b) include any person or entity designated by Provider as a joint payee on the Provider's payment checks. In no event shall such approval and action obligate the Lead Agency to anyone other than the Provider and the Provider shall remain responsible for fulfillment of all contract obligations.
4. **Beneficiaries:** Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Lead Agency and the named Provider. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Lead Agency and Provider that any such person or entity, other than the Lead Agency or the Provider, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

#### Indemnity and Insurance

5. **Indemnification:** The Provider agrees to indemnify and hold harmless the Lead Agency and Durham County and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Provider in connection with the performance of this Contract to the extent permitted by law.
6. **Insurance: (Applicable Only to Private Providers)** During the term of the Contract, the Provider agrees to furnish workers' compensation insurance as required by North Carolina law and employer's liability insurance and commercial general liability insurance as may be required to protect the Lead Agency and Durham County against claims which may arise from the Provider's performance. Providing and maintaining adequate insurance coverage is a material obligation of the Provider and is of the essence of this Contract. All such insurance shall be obtained from companies that are authorized by the Commissioner of Insurance to provide such insurance in North Carolina. The Provider shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such

insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Provider shall not be interpreted as limiting the Provider's liability and obligations under this Contract.

### **Default and Termination**

#### **7. Termination for Cause:**

(a) If the Provider substantially fails to comply with a material requirement of this Contract, the Lead Agency shall give the Provider written notice of default and shall give the Provider at least 5 calendar days to cure the default. If the Provider fails to cure the default to the Lead Agency's satisfaction by the specified deadline, the Lead Agency shall have the right to terminate this Contract by giving written notice of termination to the Provider. The termination shall be effective on the date specified in the written notice.

(b) This Contract shall be terminated immediately upon:

(1) Substantiation by DCDEE of an allegation of child maltreatment that jeopardizes the health or safety of children enrolled in the Program, as specified under Section 7B of the NC Pre-Kindergarten Program Requirements and Guidance and Durham PreK's Provider Licensing and Regulatory Compliance Requirements (Attachment B);

(2) Summary suspension by DCDEE of the Provider's child care facility license pursuant to G.S. § 150B-3(c); or

(3) Revocation by DCDEE of the Provider's child care facility license pursuant to G.S. § 110-90(5).

(c) This Contract shall be terminated by the filing of a petition for bankruptcy by the Provider.

8. **Waiver of Default:** Waiver by the Lead Agency of any default or breach in compliance with the terms of this Contract by the other party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Lead Agency and the Provider.

9. **Availability of Funds:** The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose.

10. **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

11. **Survival of Promises:** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date



unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

### **Compliance with Applicable Laws**

12. **Compliance with Laws:** The Provider shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
13. **Equal Employment Opportunity:** The Provider shall comply with all federal and State laws relating to equal employment opportunity.
14. **Confidentiality:** The Provider acknowledges that in receiving, storing, processing and otherwise dealing with information that is made confidential by State or federal law, it will safeguard and not disclose the information except as authorized by said laws.

### **Oversight**

15. **Access to Persons and Records:** Because this Contract involves the use of county funds, the county Auditor and the Auditor's duly authorized representatives shall have ready access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation in the Provider's possession that pertain to the Contract, pursuant to G.S. § 147-64.7. As the funding agency, the County of Durham shall have the same right of access.
16. **Record Retention:** Because this Contract involves the use of Durham County funds, no child attendance records, papers, reports, invoices, vouchers, correspondence, books, and any other documentation in the Provider's possession that pertain to the Contract may be destroyed, purged or disposed of without the express written consent of the Lead Agency. North Carolina's record retention policy will be in effect and requires that all such contract records must be retained for a minimum of five years. If any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period, the records must be retained until the later of: (a) the end of the five-year period; or (b) the completion of the action and resolution of all issues which arise from it. If the Provider becomes unable to maintain these records for the period described above, the Provider must transfer the records to the Lead Agency.
17. **Property Furnished to the Provider:** The Provider agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this Contract and will reimburse the Lead Agency for loss of, or damage to, such property. At the termination of this Contract, the Provider shall contact the Lead Agency for instructions as to the disposition of such property and shall comply with such instructions.

### **Miscellaneous**

18. **Amendment:** This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Lead Agency and the Provider.

19. **Choice of Law:** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina.
20. **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.
21. **Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.
22. **Time of the Essence:** Time is of the essence in the performance of this Contract.
23. **Key Personnel:** The Provider shall not replace any of the key personnel assigned to the performance of this Contract without the prior written approval of the Lead Agency. The term “key personnel” includes any and all persons identified as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.
24. **Travel Expenses:** The Provider will not be reimbursed for travel expenses.
25. **Advertising:** The Provider shall not use the award of this Contract as a part of any news release or commercial advertising.

Initial \_\_\_\_\_

**ATTACHMENT B**

**Provider Information**

Agency Name:		
Street Address:		
City:	State: NC	Zip:
Mailing Address:		
City:	State:	Zip:
Phone #:	Fax #:	
Email Address:		
Federal Tax Id#:	Financial Fiscal year:	
Agency Type:	License ID Number:	

**Provider Contract Administrator Information**

Name:		
Title:		
Street Address:		
City:	State:	Zip:
Phone #:	Fax #:	
Email Address:		

Signature Authority Name for Provider:
Signature Authority Title:

## ATTACHMENT C

### Section 1 of the Provider's Approved Durham PreK Plan

#### Assurances and Requirements

1. The Contractor will submit changes to the plan in a timely fashion. Such changes will insure that the plan is current.
2. All Contractors and subcontractors including principal/directors and classroom staff participating in the Durham PreK Program are required to participate in the county evaluation, which may include but is not limited to, individual child assessments, classroom observations, staff surveys and interviews.
3. All contractors and subcontractors including principal/directors and classroom staff participating in Durham PreK are required to participate in professional development specified by the Lead Agency including participation in Technical Assistance that includes the Classroom Assessment Scoring System® (CLASS®), coaching, and professional development.

Initial \_\_\_\_\_

## ATTACHMENT F

### Certification Required by North Carolina Law

#### Instructions

The person who signs this document should read the text of the statutes listed below and consult with counsel and other knowledgeable persons before signing.

- The text of Article 2 of Chapter 64 of the North Carolina General Statutes can be found online at:

[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_64/Article\\_2.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf)

- The text of G.S. 143-48.5 can be found online at:

[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-48.5.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html)

#### Certification

The undersigned hereby certifies that:

- (1) Pursuant to G.S. 143-48.5, the undersigned hereby certifies that the Provider named below, and the Provider's subcontractors, comply with the requirements of Article 2 of Chapter 64 of the General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.
- (2) He or she is a duly authorized representative of the Provider named below;
- (3) He or she is authorized to make, and does hereby make, the foregoing certification on behalf of the Provider.

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Provider's Name

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Signature of Provider's Authorized Agent

Date

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Printed Name of Provider's Authorized Agent

Title

---

Signature of Witness

Date

---

Printed Name of Witness

Title