

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 06-113

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND CONSEIL SCOLAIRE DE DISTRICT CATHOLIQUE CENTRE-SUD

THE CORPORATION OF THE CITY OF PETERBOROUGH by the Council thereof hereby enacts as follows:

1. That the Mayor and the Clerk be and they are hereby authorized to execute an Agreement between The Corporation of the City of Peterborough and Conseil Scolaire de District Catholique Centre-Sud, in the form attached as Schedule "A", and to affix the seal of the Corporation thereto.

By-law read a first, second and third time this 3rd day of July, 2006

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SCHEDULE "A"

THIS AGREEMENT made in triplicate this 9th day of June 2006

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the "CMSM")

and

CONSEIL SCOLAIRE DE DISTRICT CATHOLIQUE CENTRE-SUD
(the "Provider", the "Conseil")

WHEREAS the CMSM desires to retain the services of the Conseil, through the provision of grant money to the Provider, for the delivery of day nursery services including items, facilities and personnel in accordance with the terms and conditions of this agreement;

AND WHEREAS the Conseil currently operates a licensed daycare facility within École Monseigneur-Jamot located at 186 Romaine Street (the "Premises") in the City of Peterborough in the Province of Ontario;

AND WHEREAS the CMSM will administer the Grant to the benefit of the Provider to assist in the operation and maintenance of the Premises;

AND WHEREAS the Provider agrees and acknowledges that the purpose of the Grant is to increase the number of day nursery spaces available within the County of Peterborough;

AND WHEREAS the CMSM is providing the Capital Money through the Best Start Child Care Infrastructure Project ("Best Start") for the benefit of Conseil in order that the Premises will be renovated and/or constructed;

AND WHEREAS the CMSM is providing the Start Up Money through Best Start in order for the Provider to purchase certain equipment and furnishings for the Premises;

AND WHEREAS the Provider shall only use the Grant in accordance with the terms and conditions of this agreement for the provision of day nursery services in accordance with Best Start;

AND WHEREAS the Conseil further agrees and acknowledges that the Premises shall only be used by the Provider to meet the needs of Best Start client group, or another client group approved in writing by the CMSM.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

Capital Money – means a sum of money, up to the amount specified in Schedule "A", that the CMSM shall advance to the Conseil and that the Conseil shall use to renovate and/or construct the Premises in order that the Provider can deliver day nursery services in accordance with Best Start;

Grant – means the combination of the Start Up Money and the Capital Money provided by the CMSM to the Provider as specified in Schedule "A";

Premises – means the building owned by the Conseil located at 186 Romaine Street in the City of Peterborough, in the Province of Ontario, in which the Provider shall operate a licensed day nursery and deliver day nursery services in accordance with Best Start and under this agreement;

Provider – means Conseil Scolaire de District Catholique Centre-Sud being a French language school board operating a non-profit day nursery in accordance with the *Day Nurseries Act* and all the Regulations made thereunder or such other duly incorporated non-profit day nursery provider

as may be agreed upon by the Conseil Scolaire de District Catholique Centre-Sud and the CMSM;

Services – means the creation, maintenance and staffing of the additional licensed day nursery spaces specified in Schedule “A” and delivered in accordance with Best Start;

Start Up Money – means the sum of money specified in Schedule “A” that the CMSM shall pay to the Provider for the purchase of furnishings, equipment or other assets for the Premises.

ARTICLE 2 – THE PROVIDER’S OBLIGATIONS

- 2.1 The Provider shall, during the term of this agreement, create, maintain and staff the number and type of additional full-time or full-time equivalent licensed day nursery spaces as specified in Schedule “A”.
- 2.2 The Conseil shall, prior to receiving the Capital Money, satisfy the CMSM that it has good title to the Premises.
- 2.3 The Conseil shall utilize the Capital Money in order to obtain all required approvals and permits from the City of Peterborough prior to commencing any renovation and/or construction.
- 2.4 The Conseil shall use its best efforts to ensure that each renovation and/or construction project is completed in a timely manner following the execution of this agreement. Furthermore, the Provider shall use its best efforts to ensure that the Premises is ready for occupancy and use as a licensed day nursery facility on or before 5 September 2006, subject to force majeure.
- 2.5 Subject to the provisions contained herein, for a period of ten (10) years, the Provider shall create, maintain and staff the number and type of additional full-time or full-time equivalent licensed day nursery spaces as specified in Schedule “A” within the Premises. In the event the Conseil determines that it will close or sell the Premises, it shall provide the City with as much notice as is reasonably possible. In the event of such closure or sale, the Conseil shall use its reasonable best efforts to ensure that the equivalent number of licensed day nursery spaces are created in another of its schools at a location acceptable to the City, acting reasonably:
- 2.6 The Provider shall satisfy the CMSM that the Premises comply with:
 - i. Any rule, regulation, direction or order of the Peterborough County-City Health Unit and any direction or order of the Medical Officer of Health or designate; and
 - ii. The Fire Code, the *Fire Protection and Prevention Act*, the Building Code, the *Building Code Act*, the Electrical Safety Code, the *Electricity Act, 1998*, and any other federal, provincial or municipal legislative or licensing requirement(s) related to the provision of services in the Premises under this agreement.
- 2.7 The Conseil shall only use the Capital money for its legitimate expenses, exclusive of legal services, concerning the renovation and/or construction required to deliver day nursery services in accordance with Best Start.

ARTICLE 3 – FINANCIAL ASSISTANCE AND RECORD KEEPING

- 3.1 The CMSM shall provide the Grant to the Provider in an amount not exceeding that specified in Schedule “A”.
 - 3.1.1 The CMSM shall provide the Grant in the following manner:

- a. Fifty-percent (50%) of the Capital Money to the Conseil forthwith upon execution of the Agreement;
 - b. Twenty-five percent (25%) of the Capital Money upon the Conseil satisfying the City, acting reasonably, that it has awarded contracts for renovation and/or construction activities at the Premises;
 - c. Twenty-five percent (25%) of the Capital money upon the Provider satisfying the City, acting reasonably, that it has the Premises are ready for occupancy and use as a day nursery facility;
 - d. Concerning the Start-Up Money, the Provider shall obtain separate invoices each listing the permitted furnishings, equipment or other assets ordered by the Provider, and forthwith direct each invoice to the attention of Mr. Rob Anderson at the address listed in Article 13.3 below, and the CMSM shall, upon its receipt of each invoice, make prompt payment thereof; and
 - e. The Provider shall use its best efforts to co-operate and co-ordinate with other Providers, under Best Start, in order to obtain any available benefit from bulk or group purchases of permitted furnishings, equipment or other assets.
- 3.1.2 Within thirty (30) days, or such other time period to which the parties may agree, of the Conseil making final payment to its contractors the Conseil shall provide to the CMSM such information as it may reasonably require concerning the Conseil's distribution of the Capital Money.
- 3.2 The Conseil shall maintain separate records for the capital project funded by the CMSM in order to facilitate its ability to track and account for the Capital Money. The Conseil agrees and acknowledges that the Ministry of Education and/or the Ministry of Children and Youth Services (collectively and individually, the "Ministry") and/or the CMSM may require the Conseil to account for how the Capital Money was spent..
- 3.3 The Provider shall maintain financial records and books of accounting concerning its receipt and spending of the Start Up Money and the Capital Money, provided pursuant to this agreement. The Provider shall permit the CMSM and/or the Ministry, to inspect and audit the books and records at any reasonable time during the term of this agreement and subsequent to its expiry or termination and shall co-operate with the reasonable requests of CMSM and/or the Ministry in that regard. For greater clarity, the Provider shall co-operate with CMSM's reconciliation concerning the Start-Up Money and, if applicable, the Capital Money, which shall commence no later than the end of September 2006. The CMSM shall use reasonable efforts not to unduly disturb the operation of the Provider's day nursery.
- 3.4 The Provider shall spend the Start-Up Money and the Capital Money on or before 5 September 2006, unless the CMSM has, in writing, agreed to an extension of that time period.

ARTICLE 4 – COMPETITIVE PROCESS

- 4.1 The Conseil shall follow its usual process and practice prior to awarding all renovation and/or construction contracts related to this agreement.
- 4.2 The Conseil shall include as part of the tender, where applicable, and where its usual practices require bonding, a requirement that the successful contractor provide a Bid Bond or certified cheque in the amount of ten (10%) percent of the value of the contract and a Performance Bond and a Labour and Materials Bond from an established bonding company for one hundred (100%) percent of the value of the contract for the proper and faithful performance of all obligations under the contract. The Contractor shall maintain the Performance Bond and the Labour and Materials Bond in force until the contract is completed and all obligations thereunder are met. The Provider shall maintain a copy of

the bonds.

ARTICLE 5 – CONFLICT OF INTEREST

5.1 The Provider, its directors, officers, employees, agents, volunteers and members shall not engage directly or indirectly in any activity or endeavour that could potentially constitute a conflict of interest.

ARTICLE 6 – INSURANCE

6.1 The Provider shall obtain and maintain, during the term of this agreement, comprehensive general liability insurance in a form acceptable to the CMSM, in an amount of not less than Two Million (\$2,000,000.00) Dollars per occurrence. The insurance policy shall:

- i. Contain a cross-liability clause endorsement; and
- ii. Contain a clause including liability arising out of a contract or agreement.

6.2 The Conseil shall maintain fire and extended coverage insurance on the Premises in amounts sufficient to cover current replacement cost of the Premises.

6.3 The Conseil shall apply the proceeds of insurance to the reconstruction of the Premises, unless the CMSM stipulates otherwise.

6.4 The Provider shall, if requested, submit to the CMSM proof of contents insurance sufficient to cover the current replacement costs of its furnishings, equipment and other chattels.

ARTICLE 7 – SECURITY

7.1 The Conseil shall register this agreement or Notice of this agreement on title as a restriction on title within thirty (30) days of the execution of this agreement and then forthwith provide to the CMSM a Certificate of Receipt or Certificate of Registration as proof of registration.

ARTICLE 8 – RESTRICTIONS ON USE/SALE OF PREMISES OWNED BY CONSEIL

8.1 Following the completion of the renovation and/or construction of the Premises, subject to Articles 9.2 and 9.4, the Conseil shall not, for a period of ten (10) years:

- i. Change the site, structure or use of, or sell, agree to sell, lease, mortgage, encumber, donate or otherwise dispose of all or any part of the Premises, or use the Premises for other than accommodating the delivery of services under this agreement; or
- ii. Demolish or make alterations or additions to all or any part of the Premises without the prior written approval of the CMSM, who may withhold approval at its sole discretion or grant approval on such terms and conditions as it determines appropriate.

8.2 Notwithstanding the foregoing, in the event that the Conseil elects to close and dispose of one of the Premises, or has a bona fide requirement to use a Premises as a classroom, then it shall have the right to terminate (a “Termination”) this agreement upon providing six (6) months’ written notice to the CMSM.

8.3 In the event that a Termination shall occur within 5 years of completion of renovation or construction of the Premises, the Conseil shall be required to pay to the CMSM an amount calculated as follows:

Capital Money received by Provider in respect of closed Premises	X	No. of months remaining <u>in initial five (5) years</u>
		60

In the event of a Termination after the expiration of the initial five (5) years of the term, the Conseil shall not be required to make payment to the CMSM.

- 8.5 In addition, in the event that no alternative service provider is available to provide licensed day nursery services in respect of the Premises, the Conseil shall be entitled to a Termination after five (5) years of service delivery without being liable to the CMSM for any payment.

ARTICLE 9 – PROCEDURES GOVERNING TRANSFER OF LEASE

- 9.1 The Provider may assign its obligations, in whole or in part, under the agreement to another licensed day nursery service provider with the written consent of the CMSM, acting reasonably.

ARTICLE 10 – TERM

- 10.1 This agreement shall commence on the day it signed by the latter of the two parties and shall continue in effect until it is terminated in accordance with the provision of this agreement.
- 10.2 In the event the Conseil makes an election under Article 9.2 above, prior to completing five (5) consecutive years of day nursery service delivery in accordance with Best Start, it shall return the furnishings and equipment purchased with the Start-Up money to the CMSM.
- 10.3 In the event of the bankruptcy or winding up of the Provider, it shall, unless directed otherwise by the CMSM, return the furnishings, equipment or other assets purchased with the Start Up Money to the CMSM.

ARTICLE 11 – TERMINATION

- 11.1 This agreement may be terminated by the CMSM at any time prior to the awarding of the tendered construction contract or prior to the purchase of the Premises and in which case the CMSM's liability shall be limited to payment of the net loss to the Conseil on approved costs related to:
- i. Architectural, legal and other fees related to the construction or renovation of the Premises; and
 - ii. Land preparation costs.
- 11.2 The Conseil agrees to return any Capital Money advanced less the approved costs as outlined in Section 12.1.

ARTICLE 12 – NOTICES

- 12.1 Any notice or other communication required or permitted to be given pursuant to this Agreement will be delivered by hand to the party for which it is intended, or sent by telex, fax, telegram, or similar form of transmitted message or sent by postage prepaid ordinary first class mail or prepaid courier, directed to such party at the address indicated below, or at such other address as either party may stipulate by notice to the other party.
- 12.2 Any notice or communication delivered by hand or prepaid courier shall be deemed to have been received on the date of actual delivery thereof. Any notice or communication sent by telex, telegram or similar form of transmitted message shall be deemed to have been received on the next business day following transmission. Any notice or communication sent by postage prepaid ordinary first class mail will be deemed to have been received five (5) business days following the date of mailing.
- 12.3 Address for notice or communication to CMSM:

City Clerk Peterborough City Hall 500 George Street North Peterborough, ON K9H 3R9	And to	Social Services Department City of Peterborough 178 Charlotte Street P.O. Box 4138 Peterborough, ON K9J 8S1
Attention: Nancy Wright-Laking		Attention: Rob Anderson
F: 705.742.4138		F: 705.748.8858

12.4 Address for notice or communication to the Provider:

Chief of Plant and Planning Conseil Scolaire de District Catholique Centre-Sud 110 Drewry Avenue Toronto, ON M2M 1C8	And to	
Attention: Richard Francki		
F: 416-397-6653		

ARTICLE 13 – NON-ASSIGNMENT

13.1 The Conseil shall not assign this agreement, or any part thereof, without the prior written approval of the CMSM, which may be withheld in its sole discretion or given subject to such terms and conditions as the CMSM may impose.

ARTICLE 14 – OTHER AGREEMENTS

14.1 The Provider and CMSM shall enter into such other service agreements or contracts as may be required by the CMSM in connection with the delivery of services contemplated by Best Start.

IN WITNESS WHEREOF the Parties have set their respective hands this ____ day of _____ 2006

SIGNED, SEALED AND DELIVERED)

THE CORPORATION OF THE
CITY OF PETEBROUGH

Sylvia Sutherland, Mayor

Nancy Wright-Laking, City Clerk

CONSEIL SCOLAIRE DE DISTRICT
CATHOLIQUE CENTRE-SUD

Printed Name: Richard Francki
Office: Chief of Plant and Planning
I/We have the authority to bind the

Provider

City File AG15741

SCHEDULE "A"

	Type of Space to be Created and Maintained			The Grant	
		Pre-School		Start Up Money	Capital Money
Provider and Premises					
Conseil Scolaire de District Catholique Centre-Sud operating a licensed day care at 186 Romaine Street in the City of Peterborough		16		\$32,000.00	\$133,000.00