

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 06- 114**

**BEING A BY-LAW TO ALLOW THE MAYOR AND CITY CLERK TO SIGN THE BEST START CAPITOL FUNDING AGREEMENTS BETWEEN THE CITY OF PETERBOROUGH AND THE PETERBOROUGH VICTORIA NORTHUMBERLAND AND CLARINGTON CATHOLIC DISTRICT SCHOOL BOARD**

**THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Peterborough Victoria Northumberland and Clarington Catholic District School Board to transfer Best Start Initiative Capital funds for the expansion of child care spaces at the Immaculate Conception Elementary School located at 76 Robinson St. Peterborough; St John Catholic Elementary School located at 746 Park St Peterborough; St Patrick's Catholic Elementary School located at 300 Otonabee Dr. Peterborough; St Alphonsus Catholic Elementary School located at 875 St Mary's St. Peterborough; and Monsignor O'Donoghue Elementary School located at 2400 Marsdale Dr. Peterborough in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 3<sup>rd</sup> day of July, 2006.

(Sgd.) Henry Clarke, Deputy Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

**THIS AGREEMENT** made in triplicate this 3<sup>rd</sup> day of July, 2006

**B E T W E E N:**

**THE CORPORATION OF THE CITY OF PETERBOROUGH**  
(the "City")

and

**THE PETERBOROUGH-VICTORIA-NORTHUMBERLAND & CLARINGTON  
CATHOLIC DISTRICT SCHOOL BOARD**  
(the "School Board")

**WHEREAS** the City has entered into agreements with specific Service Providers for the delivery of Licensed Child Care services;

**AND WHEREAS** the Separate School Board is the owner of each of the Premises specified in Schedule "A" in which each Service Provider shall deliver its services to the City;

**AND WHEREAS** the Service Providers, specified in Schedule "A", are tenants of the School Board at the Premises specified in Schedule "A" (the "Premises");

**AND WHEREAS** the Premises require renovation and/or construction in order for each Service Provider to fulfill its obligations to the City;

**AND WHEREAS** the City is providing the Capital Money to the School Board, through the Best Start Child Care Infrastructure Project ("Best Start"), for the benefit of each Service Provider, up to the amounts specified in Schedule "A" for the renovation and/or construction of facilities for the exclusive use of the Service Providers within, or attached to, the Premises;

**AND WHEREAS** the School Board agrees and acknowledges that the purpose of the Capital Money is to increase the number of licensed childcare spaces available within the City of Peterborough through financing renovation and/or construction projects at each of the Premises;

**AND WHEREAS** the School Board shall only use the Capital Money in accordance with the terms and conditions of this agreement and in accordance with objectives of Best Start;

**NOW THEREFORE** the Parties agree as follows:

#### **ARTCILE 1 – DEFINITIONS**

**Capital Money** – means a sum of money, up to the amount specified in Schedule "A", that the City shall pay to the School Board, in accordance with the terms and conditions of this agreement to renovate and/or construct a Facility for each Service Provider at each of the Premises;

**Facility** – means that portion of each of each of the Premises which is or will be occupied by a Service Provider pursuant to a lease agreement;

**Premises** – means each school building, listed in Schedule "A", owned by the Peterborough-Victoria-Northumberland & Clarington Catholic District School Board (the "School Board") in which the Service Provider is a tenant;

**Service Provider** – shall mean, as the context requires, any or all of, Kawartha Child Care Services, Nursery Two, and/or St. Patrick's Child Care Centre, or such other duly incorporated non-profit daycare provider operating in accordance with the *Day Nurseries Act* and the Regulations made thereunder as may be agreed upon by the School Board and the City.

## ARTICLE 2 – THE SCHOOL BOARD’S OBLIGATIONS

- 2.1 The School Board agrees and acknowledges that it is receiving and administrating the Capital Money on behalf of, and for the benefit of, each Service Provider. Furthermore, the School Board agrees and acknowledges that playground equipment and any landscaping required for the installation of playground equipment shall be paid for out of the Capital Money.
- 2.2 The School Board shall co-operate with each Service Provider concerning the development of appropriate architectural plans for each Facility. The City agrees and acknowledges that each of the Premises is owned by the School Board, who shall have the ultimate decision on structural, architectural and aesthetic matters.
- 2.3 The School Board 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 School Board 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 School Board shall use its best efforts to ensure that the Facility is ready for occupancy by the Service Provider on or before 5 September 2006.
- 2.5 Subject to the provisions contained herein, for a period of ten (10) years, the School Board shall grant to each Service Provider, or another service provider acceptable to the City, the exclusive use of the Facility for the provision of licensed daycare services. In the event the School Board determines that it will close or sell the Premises in which the Facility is located, it shall provide the City with as much notice as is reasonably possible. In the event of such closure or sale, the School Board shall use its reasonable best efforts to ensure that the equivalent number of licensed day care spaces are created in another of its schools at a location acceptable to the City, acting reasonably.
- 2.6 Prior to occupancy by the Service Provider, the School Board shall satisfy the City that the Facility complies with:
  - a. 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;
  - b. 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 School Board shall only use the Capital Money for its legitimate expenses, exclusive of legal services, concerning the renovation and/or construction of each Facility.

### **ARTICLE 3 – FINANCIAL ASSISTANCE AND RECORD KEEPING**

- 3.1 The City shall provide the Capital Money to the School Board in an amount not exceeding that specified in Schedule “A” for each Facility.
- 3.1.1 The City shall provide the Capital Money in the following manner:
- a. Fifty-percent (50%) forthwith upon execution of the Agreement;
  - b. Twenty-five (25%) upon the School Board satisfying the City, acting reasonably, that it has awarded contracts for the renovation and/or construction of the Premises; and
  - c. Twenty-five (25%) upon the School Board satisfying the City, acting reasonably, that the Premises have been occupied by the Provider.
- 3.1.2 Within thirty (30) days, or such other time period to which the parties may agree, of providing the School Board providing final payment to its contractors the School Board shall provide to the City all financial details, it may reasonably require, concerning the School Board’s distribution of the Capital Money.
- 3.2 The School Board shall maintain separate records for the Capital Money for each of the Premises in order to facilitate its ability to track and account for the Capital Money. The School Board 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 City may require the School Board to account for how the Capital Money was spent.
- 3.3 On behalf of each Service Provider, the School Board shall maintain financial records and books of accounting concerning its receipt and spending of the Capital Money.
- 3.4 The School Board shall permit the City and/or the Ministry, or designate, to inspect and audit the records and books referred to in Article 3.3 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 City and/or Ministry in that regard.

### **ARTICLE 4 – COMPETITIVE PROCESS**

- 4.1 The School Board shall follow its usual process and practice prior to awarding all renovation and/or construction contracts related to this agreement.
- 4.2 The School Board shall include as part of the tender, where applicable, and where the School Board’s 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 School Board shall maintain a copy of the bonds.

**ARTICLE 5 – CONFLICT OF INTEREST**

5.1 The School Board, 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 School Board shall ensure that the Service Provider obtains and maintains, during the term of this agreement, comprehensive general liability insurance in a form acceptable to the City, in an amount of not less than Two Million (\$2,000,000.00) Dollars per occurrence. The insurance policy shall:

- i. Include as an additional insured the School Board;
- ii. Contain a cross-liability clause endorsement; and
- iii. Contain a clause including liability arising out of a contract or agreement.

6.2 The School Board shall maintain fire an extended coverage insurance on the Premises in amounts sufficient to cover current replacement costs.

**ARTICLE 7 – SECURITY**

7.1 The School Board 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 City a Certificate of Receipt or Certificate of Registration as proof of registration.

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

8.1 Following the completion of the renovation and/or construction of the Facility, the School Board 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 Facility for other than accommodating the provision of licensed daycare spaces.
- ii. Demolish or make alterations or additions to all or any part of the Facility without the prior written approval of the City, 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 School Board elects to close and dispose of one of the Premises, or has a bona fide requirement to use a Facility as a classroom, then it shall have the right to terminate (a "Termination") this agreement as it relates to any Facility on six (6) months' written notice to the City.

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

Capital Money received by School Board	X	No.	of
months remaining			
In respect of closed Facility <u>in initial five (5) years</u>			

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

- 8.4 In addition, in the event that no Service Provider is available to provide Licensed Child Care Services in respect of any of the Premises, the School Board shall be entitled to terminate this agreement in respect of such Premises without being liable to the City for any payment.

**ARTICLE 9 – PROCEDURES GOVERNING TRANSFER OF LEASE**

- 9.1 The School Board shall only transfer a Service Provider’s lease to another Service Provider, if directed to do so by the City. The transfer of a lease to another Service Provider shall be subject to the approval of the School Board not to be unreasonably withheld or delayed.

**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 provisions of this agreement.

**ARTICLE 11 – TERMINATION**

- 11.1 This agreement may be terminated by the City at any time prior to the awarding of the tendered construction contract for the Premises and in which case the City’s liability shall be limited to payment of the net loss to the School Board 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 School Board agrees to return any Capital Money advanced less the approved costs as outlined in Section 11.1.

**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 the City:

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
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13.1 Address for Notice or communication to the School Board:

The Peterborough-Victoria-Northumberland & Clarington Catholic District School Board 1355 Lansdowne Street West Peterborough, Ontario K9J 7R8	And to	Lockington, Lawless, Fitzpatrick Barristers & Solicitors P.O. Box 1146 Peterborough, ON K9J 7H4
Attention: Isabel Grace		Attention: Peter Lawless
F: 705.748.5187		F: 705.742.4644

**ARTICLE 14 – NON-ASSIGNMENT**

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

**ARTICLE 15 – OTHER AGREEMENTS**

15.1 The Parties shall enter into such other service agreements or contracts as may be required in connection with the delivery of services contemplated by the Best Start Transition Plan.

IN WITNESS WHEREOF the Parties have set their respective hands this 3<sup>rd</sup> day of July, 2006

SIGNED, SEALED AND DELIVERED	)	THE CORPORATION OF THE CITY OF PETEBROUGH
	)	
	)	
	)	
	)	_____
	)	Sylvia Sutherland, Mayor
	)	
	)	
	)	_____
	)	Nancy Wright-Laking, City Clerk
	)	
	))	THE PETERBOROUGH-VICTORIA-NORTHUMBERLAND & CLARINGTON CATHOLIC DISTRICT SCHOOL BOARD
	)	
	)	
	)	_____
	)	Printed Name:
	)	Office:
	)	I/We have the authority to bind the School Board
	)	
	)	
	)	_____
	)	Printed Name:
	)	Office:
	)	I/We have the authority to bind the School Board

**SCHEDULE "A"**

	Type and Number of Licensed Daycare Space to be Created and Maintained			The Grant	
	Toddler	Preschool	Junior/Senior Kindergarten	Start Up Money	Capital Money
<b>Service Provider and Premises</b>					
Nursery Two Preschool located in St. Alphonsus			20	\$40,000.00	\$95,471.00*
Nursery Two Preschool located in St. John's School			20	\$40,000.00	490,511.00*
St. Patrick's Childrens Daycare Centre Located in St. Patrick's School			20	\$40,000.00	\$57,933.00*
Board to identify provider located in Immaculate Conception School			20	\$40,000.00	\$66,724.00*
Board to identify provider located in Monsignor O'Donoghue School			20	\$40,000.00	\$60,374.00*
			100		

\* Includes costs of relocating to school setting.