

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 06-115**

**BEING A BY-LAW TO ALLOW THE MAYOR AND CITY CLERK TO SIGN THE BEST START INITIATIVE CAPITAL AND START UP FUNDING AGREEMENTS BETWEEN THE CITY OF PETERBOROUGH AND HUCKLEBUG PRESCHOOL INC.**

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 Hucklebug Preschool Inc. to transfer Best Start Initiative Capital and Start Up funds for the expansion of child care spaces at the Hucklebug Preschool located at 45 Alma St. Norwood, 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 "CMSM")

and

**HUCKLEBUG PRESCHOOL INC.**  
(the "Provider")

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

**AND WHEREAS** the Provider currently operates a licensed daycare facility at 45 Alma Street (the "Premises") in Norwood, in the County of Peterborough in the Province of Ontario, whereas the CMSM will pay the Grant to 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 licensed childcare 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 Provider 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 Provider 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 administer on behalf of the Provider and that the Provider shall use to renovate and/or construct the Premises in order that the Provider can deliver its services to the CMSM;

**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 Provider located at 45 Alma Street in Norwood, in the County of Peterborough, in the Province of Ontario in which the Provider shall operate a licensed day nursery and deliver its services to the CMSM under this agreement;

**Provider** – means Hucklebug Preschool Inc., being a duly incorporated non-profit daycare provider operating in accordance with the *Day Nurseries Act* and all the Regulations made thereunder;

**Services** – means the creation, maintenance and staffing of the additional licensed daycare 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 and equipment 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 daycare spaces as specified in Schedule “A”.
- 2.2 The Provider shall, prior to the CMSM releasing the Capital Money in accordance with Section 3.1(a) below, satisfy the CMSM that it has good title to the Premises.
- 2.3 The Provider shall obtain all necessary licences, permits and approvals required for:
  - i. The Renovation and/or construction of the Premises; and
  - ii. The delivery of its Services, andif required, provide proof of same to the CMSM.
- 2.4 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.
- 2.5 The Provider shall not reduce the capacity of its licensed day nursery, save and except upon receiving the written permission of the CMSM.

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

- 3.1 The CMSM shall administer the Grant to the benefit of the Provider up to the amounts specified in Schedule “A”. More particularly, the Parties agree that:
  - a. Concerning the Capital Money, the Provider shall obtain separate invoices for each permitted expense related to the design and construction of any renovation or addition to the Premises, 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 each invoice, make prompt payment thereof;

- b. 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 each invoice, make prompt payment thereof; and
  - c. The Provider shall use its best efforts to co-operate and co-ordinate with other Providers in order to obtain any available benefit from bulk or group purchases of permitted furnishings, equipment or other assets.
- 3.2 The Provider shall maintain separate records for the capital project funded by the CMSM.
- 3.3 The Provider shall maintain financial records and books of accounting concerning its receipt and spending of the Start Up Money and, if applicable, the Capital Money, provided pursuant to this agreement. The Provider shall permit the CMSM, or designate, 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. 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 ensure that its Audited Financial Statements reflect the CMSM's financial contributions made under this agreement.
- 3.5 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 Provider shall use an open tender process prior to awarding all construction contracts related to this agreement.
- 4.2 The Provider shall include as part of the tender, 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 6 – CONFLICT OF INTEREST**

- 6.1 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 7 – INSURANCE**

- 7.1 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.
- 7.2 The Provider shall maintain fire and extended coverage insurance on the Premises in amounts sufficient to cover current replacement cost of the Premises.
- 7.3 The Provider shall apply the proceeds of insurance to the reconstruction of the Premises, unless the CMSM stipulates otherwise.
- 7.4 The Provider shall, if requested, submit proof of insurance to the CMSM.

**ARTICLE 8 – SECURITY**

- 8.1 The Provider 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 9 – RESTRICTIONS ON USE/SALE OF PREMISES OWNED BY PROVIDER**

- 9.1 Following the completion of the renovation and/or construction of the Premises, subject to Articles 9.2 and 9.4, the Provider 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.
- 9.2 Notwithstanding the foregoing, in the event that the Provider elects to dispose of the Premises it shall, subject to Article 9.3, have the right to terminate (a “Termination”) this agreement upon providing six (6) months written notice to the CMSM.
- 9.3 In the event that a Termination shall occur within 5 years of completion of renovation or construction of the Premises, the Provider shall be required to pay to the CMSM an amount calculated as follows:

$$\begin{array}{r}
 \text{Capital Money received by Provider} \\
 \text{remaining} \\
 \text{in respect of Premises}
 \end{array}
 \times
 \begin{array}{r}
 \text{No.} \\
 \text{of} \\
 \text{months}
 \end{array}
 \text{ of }
 \begin{array}{r}
 \text{months} \\
 \text{remaining} \\
 \text{in initial five (5) years}
 \end{array}$$

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

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

#### **ARTICLE 10 – PROCEDURES GOVERNING TRANSFER OF LEASE**

- 10.1 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 11 – TERM**

- 11.1 This agreement shall commence on the day it signed by the latter of the two parties and shall continue in effect until 31 March 2007 and may be extended upon the written agreement of the Parties for additional terms.
- 11.2 In the event the Premises are disposed of, the agreement shall terminate and the proceeds of the sale shall be disposed of in the following manner:
- a. In the event of the sale of the Premises, where the CMSM has provided Start Up Money for the purchase of furnishings and equipment, the Provider shall, unless directed otherwise by the CMSM, include the value of the furnishings and equipment in the purchase price of the Premises;
- 11.3 In the event of the bankruptcy, winding up or dissolution of the Provider during the initial five (5) years of the term of this agreement, the Provider shall distribute the assets it purchased with the Start Up Money amongst other charities with similar charitable objects.

#### **ARTICLE 12 – TERMINATION**

- 12.1 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 Provider on approved costs related to:
- i. Architectural, legal and other fees related to the project;
  - ii. Land preparation costs; and
  - iii. The disposal of land acquired for the project.
- 12.2 The Provider agrees to return any Capital Money advanced less the approved costs as outlined in Section 12.1.

**ARTICLE 13 – NOTICES**

13.1 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.

13.2 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.

13.3 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

13.4 Address for Notice or communication to the Provider:

Hucklebug Preschool Inc. 45 Alma Street Norwood, Ontario K0L 2V0	And to	McGillen, Ayotte, Dupuis Barristers & Solicitors 347 Charlotte Street Peterborough, ON
Attention: Program Supervisor, Karen Radnor		Attention: Ms. Arlyn Dupuis
		F: 705.748.9125

**ARTICLE 14 – NON-ASSIGNMENT**

14.1 The Provider 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 15 – OTHER AGREEMENTS**

15.1 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  
)

) **HUCKLEBUG PRESCHOOL INC.**  
)

) \_\_\_\_\_  
) Printed Name:  
) Office:  
) I/We have the authority to bind  
) the Provider  
)

) \_\_\_\_\_  
) Printed Name:  
) Office:  
) I/We have the authority to bind  
) the Provider

**SCHEDULE "A"**

	Type of Space to be Created and Maintained			The Grant	
	Toddler	Primary	Junior/Senior Kindergarten	Start Up Money	Capital Money
<b>Provider and Premises</b>					
Hucklebug Preschool Inc. located at 45 Alma Street in Norwood, Ontario			12	\$24,000.00	\$12,000.00