

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 06-116**

**BEING A BY-LAW TO ALLOW THE MAYOR AND CITY CLERK TO SIGN THE BEST START INITIATIVE START UP FUNDING AGREEMENTS BETWEEN THE CITY OF PETERBOROUGH AND NURSERY 2 PRESCHOOL**

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 Nursery 2 Preschool to transfer Best Start Initiative Start Up funds for the expansion of child care spaces at the St Alphonsus Catholic School located at 875 St Mary's St. Peterborough, and at the St John Catholic School located at 746 Park St 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 "CMSM")

and

**NURSERY TWO**  
(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 993 Talwood Drive in the City of Peterborough and whereas the CMSM will assist the Provider to operate and maintain a licensed daycare facility (the "Facility") in St John's Separate School and in St. Alphonsus School (collectively and/or individually, 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 City of Peterborough;

**AND WHEREAS** the CMSM is providing the Capital Money from the Best Start Child Care Infrastructure Project ("Best Start") directly to the Peterborough-Victoria-Northumberland & Clarington Catholic District School Board (the "School Board") for the benefit of the 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, furnishings or other assets 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:

### **ARTCILE 1 – DEFINITIONS**

**Capital Money** – means a sum of money, up to the amount specified in Schedule "A", that the CMSM shall transfer to the School Board for the renovation and/or construction of the Premises in order to permit the Provider to 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 school building(s), in which the Provider is a tenant, owned by the Peterborough-Victoria-Northumberland & Clarington Catholic District School Board (the "School Board") in which the Provider shall operate a licensed day nursery facility and deliver its services to the CMSM under this agreement;

**Provider** – means Nursery Two, 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 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 and staff the number and type of additional full-time or full-time equivalent Licensed Daycare Spaces as specified in Schedule “A”. Furthermore, the Provider shall maintain such additional Licensed Daycare Spaces for as long as the Premises are operated as a school.
- 2.2 The Provider shall, prior to receiving the Start Up Money, satisfy the CMSM that it has:
  - a. Entered into an agreement, acceptable to the CMSM, with the School Board permitting the renovation and/or construction of the Premises; and
  - b. Entered into a lease (the “Lease”) with the School Board which permits the Provider to deliver its services to the CMSM in accordance with the terms and conditions of this agreement.
- 2.3 Prior to occupancy, the Provider shall satisfy the CMSM that the Premises comply 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; and
  - 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.
- 2.4 The Provider shall co-operate with the School Board concerning the development of appropriate architectural plans for the Premises.
- 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 provide the Grant to the benefit of the Provider in the amounts specified in Schedule “A”. More particularly, the Parties agree that:
  - a. The CMSM shall pay the Capital Money directly to the School Board in an amount not to exceed that specified in Schedule “A”;
  - b. Upon receipt by the CMSM of an invoice or invoices, each separately listing permitted furnishings, equipment or other assets ordered by the Provider, the CMSM shall pay the said invoice. The Provider shall forthwith direct each invoice to the attention of Mr. Rob Anderson at the address listed in Article 11.3 below; 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 the bulk or group purchasing of permitted furnishings, equipment or other assets.
- 3.2 The Provider shall maintain financial records and books of accounting concerning its receipt and spending of the Start Up Money. 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 use co-operate with the CMSM’s reconciliation

concerning the Start-Up 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.

- 3.3 The Provider shall spend the Start Up Money on or before 5 September 2006, unless the CMSM has, in writing, agreed to an extension of that time period.

#### **ARTICLE 4 – LICENCES, PERMITS AND APPROVALS**

- 4.1 The Provider shall obtain all necessary licences, permits and approvals required for the delivery of its Services, and, if requested, provide copies of same to the CMSM.

#### **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 with Best Start.

#### **ARTICLE 6 – INSURANCE**

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

#### **ARTICLE 7 – COPY OF LEASE**

- 7.1 The Provider shall submit to the CMSM, if requested, a copy of the lease.

#### **ARTICLE 8 – PROCEDURES GOVERNING TRANSFER OF LEASE**

- 8.1 The Provider may transfer the lease to another service provider with the consent of its Landlord.

#### **ARTICLE 9 – TERM**

- 9.1 This agreement shall commence on the day it signed by the latter of the two parties and shall continue in effect until 31 December 2006 and may be extended upon the written agreement of the Parties for additional terms.
- 9.2 In the event of the bankruptcy or winding up of the Provider, and in the event the CMSM has provided Start Up Money for the purchase of furnishings and equipment, the Provider shall, unless directed otherwise by the CMSM, return the furnishings and equipment to the CMSM.
- 9.3 In the event the School Board sells or otherwise disposes of or closes the Premises and the Provider can no longer provide its Services under this agreement in the Premises, any furnishings and equipment or other assets purchased with the Start Up Money shall be delivered to the CMSM for redistribution to other not-for-profit child care centers.

#### **ARTICLE 10 – TERMINATION**

- 10.1 This agreement may be terminated by the CMSM at any time prior to the awarding of the tendered construction contract for the Premises and in which case the Provider agrees that the CMSM shall not be liable for any breach of contract or economic loss suffered by the Provider.
- 10.2 In the event the CMSM terminates the agreement:
- a. And the Provider has not ordered the furnishings, equipment or other assets, the Provider shall not order such furnishings, equipment or other assets and under no circumstances shall the CMSM be under any

obligation to pay any invoice, or provide any funds to the Provider for any furnishings, equipment or other assets; or

- b. And the Provider has order the furnishings, equipment or other assets, the Provider shall forthwith return to the CMSM such furnishings, equipment or other assets delivered to the Provider unless the Provider satisfies the CMSM, acting reasonably, that such furnishings, equipment and other assets shall continue to be used for the provision of licensed daycare services.

**ARTICLE 11 – NOTICES**

11.1 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.

11.2 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.

11.3 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

11.4 Address for notice or communication to the Provider:

Nursery Two 993 Tallwood Drive Peterborough, ON K9J 7R8	And to	Howell Fleming LLP Barristers & Solicitors 415 Water Street P.O. Box 148 Peterborough, ON K9J 6Y5
Attention: Teresa Burke		Attention: Garry Rishor
F: 705.745.7571		F: 705.745.6220

**ARTICLE 12 – NON-ASSIGNMENT**

12.1 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 13 – OTHER AGREEMENTS**

13.1 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.



**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>Provider and location of Premises</b>					
Nursery Two located in St. Alphonsus School			20	\$40,000.00	\$95,471.00*
Nursery Two located in St. John's School		16	20	\$72,000.00	\$490,511.00*

\*includes costs of relocating to school setting.

29 March 2006 – 2:30 PM