

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 06-117**

**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 TRENT CHILD CARE**

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 Trent Child Care to transfer Best Start Initiative Capital and Start Up funds for the expansion of child care spaces at the Trent – Twilight Children’s Club located at 832 Charles Street, Bridgenorth, 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

**TERNT DAY CARE CENTRE 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 832 Charles Street (the "Premises") in Bridgenorth, 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:

## **ARTCILE 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 832 Charles Street in Bridgenorth, 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 Trent Child Care 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, 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 daycare spaces as specified in Schedule “A”.
- 2.2 The Provider shall, prior to receiving the Capital Money, satisfy the CMSM that it is a tenant in good standing at the Premises.
- 2.3 The Provider warrants that it has at least five (5) years remaining on its Lease at its current location.
- 2.4 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.
- 2.5 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 of 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 of 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 interest in the Premises.
- 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 its usual tender process prior to awarding or entering into any construction contract related to this agreement.
- 4.2 The Provider shall include as part of any 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 to the CMSM proof of contents insurance sufficient to cover the current replacement costs of its furnishings, equipment and other chattels.

**ARTICLE 8 – PROVISION REGARDING CAPITAL MONEY**

- 8.1 Pursuant to Article 3.1 above, the Capital Money shall be administered in the following manner:
  - i. The Provider shall obtain the written permission of Mr. Rob Anderson, at the address listed in Article 13.3 below, prior to purchasing any materials or prior to entering into any construction or renovation contract concerning the Premises; and
  - ii. Each invoice for materials or for a construction or renovation contract shall be directed to the attention of Mr. Rob Anderson, at the address listed in Article 13.3 below, for payment and the CMSM shall, upon its receipt of each invoice, make prompt payment thereof.

**ARTICLE 9 – THE GRANT MONEY**

- 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, for a period of five (5) years remain a tenant in good standing at 832 Charles Street in Bridgenorth, Ontario, and shall continue to use the Premises for delivery of its services under this agreement.
- 9.2 Notwithstanding the foregoing, in the event that the Provider vacates the Premises, or its Landlord terminates the Provider’s Lease concerning the Premises, the Provider shall, subject to Article 9.3, have the right to terminate (a “Termination”) this agreement upon providing the CMSM with the same written notice as it received from, or gave to, its Landlord (as the case may be) under the Lease.
- 9.3 In the event that a Termination occurs prior to the expiration of the initial five (5) years of the term, the Provider may be required to pay to the CMSM an amount calculated as follows:

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

60

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 the event the Provider vacates the Premises pursuant to its Lease being terminated prior to the expiry of the initial five (5) year term of this agreement, and subject to the Provider continuing to deliver its services to the CMSM in accordance with Best Start and this agreement in another location, it shall not be required to re-pay any of the Start Up Money or return any of the furnishings, equipment or other assets purchased with the Start Up Money.
- 9.5 In the event the Provider vacates the Premises pursuant to its Lease being terminated prior to the expiry of the initial five (5) year term of this agreement, and the Provider is unable to continue to deliver its services to the CMSM in accordance with Best Start and this agreement, but provided an alternative service provider (the Alternative Provider), acceptable to the CMSM, acting reasonably, is able to deliver the said services, then, upon the Alternative Provider taking delivery of the furnishings, equipment or other assets purchased with the Start Up Money, the Provider shall not be required to re-pay any of the Start Up Money or return any of the furnishings, equipment or other assets purchased with the Start Up Money to the CMSM.
- 9.6 In the event that no Alternative Provider is available to provide licensed day nursery services within the Premises or at another location acceptable to the CMSM, the Provider may Terminate this agreement after five (5) years of service delivery without being liable to the CMSM for any repayment of Capital Money or Start Up Money nor any liability concerning the return of furnishings, equipment or other assets purchased with the Start Up Money.

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

- 10.1 The Provider may assign its obligations, in whole or in part, under this agreement to another licensed day care 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:
- i. 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, it shall distribute its assets 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.



**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>					
Trent Child Care located at 832 Charles Street in Bridgenorth, in the County of Peterborough	5			\$10,000.00	\$16,926.00