

Bill No. 89
2016

By-law No. A.-_____

A By-law to approve the Funding and Project Agreement with Thames Valley District School Board for construction of a Neighbourhood Family Centre at a new public elementary school to be constructed in Northwest London, and to delegate authority under the Agreement to the Managing Director of Neighbourhood Children and Fire Services and to his or her written delegate.

WHEREAS the City has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, or any other Act, pursuant to the provisions of section 9 of the *Municipal Act, 2001*;

AND WHEREAS s. 57 of the *Child Care and Early Years Act, 2014*, S.O. 2014, c. 11, Sched. 1 ("*Child Care and Early Years Act*") authorizes the City as service system manager under the *Child Care and Early Years Act* to establish, administer, operate and fund child care and early years programs and services; and that a service system manager shall coordinate the planning and operation of child care and early years programs and services with the planning and provision of other human services delivered by the service system manager;

AND WHEREAS, pursuant to s. 49 of the *Child Care and Early Years Act*, it is a matter of provincial interest that there be a system of child care and early years programs and services that: (a) is focused on Ontario's children and families; (b) promotes the health, safety and well-being of children; (c) provides high quality experiences and positive outcomes for children with a provincial framework to guide pedagogy; ... (e) responds to communities' needs by, (i) providing services both for families who receive financial assistance for child care and for families who do not receive such financial assistance, (ii) providing a range of service options to support parents who are part of the workforce, such as options that address varied working hours and arrangements; ... (h) is co-ordinated with other community and human services; (i) is flexible and able to adapt to local circumstances; (j) supports the social and economic well-being of Ontarians; ... (l) supports the transition from child care and early years programs and services to school; (m) approaches pedagogy in child care and early years programs and services in a manner that supports the transition referred to in clause (l)...

AND WHEREAS the *Child Care and Early Years Act* requires co-operation between service system managers and the Minister, and the duty to co-operate includes the duty to provide access to and share information relating to child care and early years programs and services;

AND WHEREAS the *Child Care and Early Years Act* requires the service system manager to have a child care and early years programs and services plan for its service area (being the geographic area of the City of London and County of Middlesex), which plan must address the matters of provincial interest set out in section 49, which plan must be approved by Council;

AND WHEREAS s. 56 of the *Child Care and Early Years Act* requires the service system manager to (c) coordinate the planning and operation of child care and early years programs and services with the planning and provision of other human services delivered by the service system manager;

AND WHEREAS the City is requesting the Thames Valley District School Board to construct a Neighbourhood Family Centre as part of a new public elementary school to be constructed in Northwest London;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS sections 9, 10 and 23.1 through 23.5 of the *Municipal Act, 2001* authorize a municipality to delegate its powers and duties under the Act to a person or body;

AND WHEREAS Council Policy By-law A.-6151-17 established a policy for the delegation of powers and duties (Delegation of Powers and Duties Policy), as required under section 270(1) of the *Municipal Act, 2001*;

AND WHEREAS the Delegation of Powers and Duties Policy sets out the factors that Council may consider, without limitation, when delegating a power or duty: i. the term of the delegation; ii. the conditions or restrictions, if any, on City Council's power to revoke the delegation; iii. The conditions or restrictions, if any, to be imposed on the delegate; iv. Whether the power or duty to be delegated will be exercised only by the delegate or by both the delegate and the municipality; whether the delegation is consistent with the municipality's policies under section 270 of the *Municipal Act, 2001*; the importance and complexity of the power or duty to be delegated and whether the delegate has the requisite qualifications and expertise to exercise the delegated powers and duties;

AND WHEREAS it is anticipated that the maximum amounts sufficient to cover all of the City's costs in this matter (including the City's Proportionate Share of the Contract Price, the City's Proportionate Share of Other Costs, the City's Parking Proportionate Share, and HST) will not exceed \$920,000.00 plus 10% contingency.

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Funding and Project Agreement ("Agreement") to be entered into between The Corporation of the City of London and THAMES VALLEY DISTRICT SCHOOL BOARD, with financing available from the 100% Provincial funding provided through the Child Care and Early Childhood Development Reserve Fund, to construct a Neighbourhood Family Centre at a new public elementary school in Northwest London, substantially in the form attached as Schedule "1" to this By-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. The Managing Director of Neighbourhood Children and Fire Services, and in his or her absence, the Managing Director of Neighbourhood Children and Fire Services' written delegate, with respect to the Agreement, are delegated the authority:
 - (i) under ss.2.01(2)(a), to review, provide comments to the Board, and determine if the Plan is acceptable, and if acceptable, to provide written notice of such acceptability to the Board;
 - (ii) under ss. 2.01(2)(b), to determine whether to participate in the Project, and to advise the Board in writing of such determination;
 - (iii) under ss. 2.01(2)(c), to provide written comments on the Plan and to determine whether to agree on amendments to the Plan;
 - (iv) under ss. 2.01(2)(d), to review an Amended Plan, and determine if it is acceptable, and to advise the Board in writing of its determination;
 - (v) under ss. 2.01(5)(d), to request changes to the Work, and to advise the Board in writing whether to proceed with such change;
 - (vi) under ss. 2.01(6), to review and comment upon any reconciliation;
 - (vii) under ss. 2.01(8), to meet with the Board to discuss whether and how the Board wishes to proceed with the Project and to reach a resolution; and
 - (viii) under ss. 3.01, to act as representative for the City;

on the condition that any actions taken by the delegate do not require additional funding or are provided for in the City's current budget, and that do not increase the indebtedness or contingent liabilities of The Corporation of the City of London.

4. The Manager, Children's Services is designated as the City's Project Manager under section 2.04 of the Agreement, and is delegated the authority to act pursuant to that section, on the condition that any actions taken by the delegate do not require additional funding or are provided for in the City's current budget, and that do not increase the indebtedness or contingent liabilities of The Corporation of the City of London.

5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on March 1, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading – March 1, 2016
Second reading – March 1, 2016
Third reading – March 1, 2016

Schedule "1"

APPENDIX B

FUNDING AND PROJECT AGREEMENT (London North West –Family Centre)

THIS AGREEMENT made as of the day of February, 2016,

B E T W E E N:

THAMES VALLEY DISTRICT SCHOOL BOARD

(hereinafter the "**Board**")

OF THE FIRST PART

- AND -

THE CORPORATION OF THE CITY OF LONDON

(hereinafter the "**City**")

OF THE SECOND PART

WHEREAS the City has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority pursuant to the provisions of section 9 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;

AND WHEREAS section 107 of the *Municipal Act, 2001* provides that a municipality may make grants, on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality;

AND WHEREAS the Board is the registered owner of the fee simple of the Lands (as defined below);

AND WHEREAS, the City has requested that the Board cause the Premises (as defined below) to be constructed as part of the Project (as defined below), and the City municipal council considers it to be in the interests of the municipality to make a grant to the Board to fund a portion of the costs of the Project on the basis contemplated herein;

NOW THEREFORE, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 - DEFINITIONS AND TERM

1.01 Definitions

In this Agreement, the following terms have the following respective meanings:

“**Amended Plan**” has the meaning given in section 2.01(2)(c);

“**Board’s Proportionate Share**” means, when used in relation to any fees, costs, expenses or other monetary amounts referred to under any of the provisions of this Agreement (other than Parking Costs (as defined below)), the product obtained by multiplying the amount of such fees, costs, expenses or other monetary amounts, by the fraction of A/B ,

WHERE: **A** is the square footage of the floor area of the entire building constituting part of the Project (measured to the outside of any exterior walls, but excluding the square footage of the floor area of the Family Centre Building Space (as defined below), also measured to the outside of any exterior walls of the Family Centre Building Space, and less fifty percent (50%) of the square footage of the floor area of the vestibules shown in yellow on the drawings forming part of Schedule 5 hereto; and

B is the square footage of the floor area of the entire building constituting part of the Project (measured to the outside of any exterior walls and including the square footage of the floor area of the Family Centre Building Space, again measured to the outside of any exterior walls of the Family Centre Building Space, but without duplication),

AND WHEN calculating the square footage of the floor area of the Family Centre Building Space, measurements will be taken to the midpoint of any interior demising walls between the Family Centre Building Space and the remainder of the building, and

when used in relation to, or applied to, Parking Costs, pursuant to any provision of this Agreement, means the Board’s Parking Proportionate Share;

“**Board’s Parking Proportionate Share**” means sixty-nine point seven percent (69.7%) of Parking Costs, which percentage has been derived based on the number of parking places the City has asked to be constructed as part of the Premises in relation to the aggregate number of parking places contemplated for the Project;

“City’s Proportionate Share” means, when used in relation to any fees, costs, expenses or other monetary amounts referred to under any of the provisions of this Agreement (other than Parking Costs), the product obtained by multiplying the amount of such fees, costs, expenses or other monetary amounts, by the fraction of C/B,

WHERE: **C** is the square footage of the floor area of the Family Centre Building Space (measured to the outside of any exterior wall of the Family Centre Building Space), plus fifty percent (50%) of the square footage of the floor area of the vestibules shown in yellow on the drawings forming part of Schedule 5 hereto; and

B is the square footage of the floor area of the entire building constituting part of the Project (measured to the outside of any exterior walls and including the square footage of the floor area of the Family Centre Building Space),

AND WHEN calculating square footage of the floor area of the Family Centre Building Space, measurements will be taken to the midpoint of any interior demising walls between the Family Centre Building Space and the remainder of the building, and

when used in relation to, or applied to, Parking Costs, pursuant to any provision of this Agreement, means the City’s Parking Proportionate Share;

“City’s Parking Proportionate Share” means thirty point three percent (30.3%) of the Parking Costs, which percentage has been derived based on the number of parking places the City has asked to be constructed as part of the Premises in relation to the aggregate number of parking places contemplated for the Project;

“Consultant” means the party named by the Board as the “Consultant” under the Contract;

“Contract” has the meaning given in section 2.01(5) below;

“Contractor” means the party identified as the “Contractor” under the Contract;

“Contract Price” means the amount stipulated as the “Contract Price” under the Contract;

“Family Centre” has the meaning set forth in Schedule 1 hereto;

“Family Centre Building Space” means the area of the building which forms part of the Project and which is the part of the Premises to be constructed as part of the building;

“Initial Advance” has the meaning given in section 2.01(5)(a) below;

“Lands” means the lands described in Schedule 2 hereto;

“Operator” means an entity identified and recruited by the City for purposes of operating a Family Centre at the Premises, who is acceptable to the Board (acting reasonably) and who enters into a lease relating to the Premises in such form as may be required by the Board, from time to time;

“Other Costs” has the meaning given in section 2.02 below;

“Parking Costs” means all fees, costs, expenses or other monetary amounts incurred by the Board in connection with the construction of the parking areas forming part of the Project, as shown on Schedule 3 hereto;

“Parties” means the Board and the City;

“Plan” has the meaning given in section 2.01(1) below;

“Premises” means the facilities described in Schedule 4 hereto;

“Project” refers to the development and construction project (including site alterations) described in Schedule 5 hereto;

“Proportionate Share” means either the City’s Proportionate Share or the Board’s Proportionate Share, as the context requires; and

“Work” will have the meaning given in the Contract.

1.02 Term

This Agreement will remain in effect until the last of the obligations of the Parties hereunder to be fulfilled is fulfilled.

ARTICLE 2 - PROJECT

2.01 Project

(1) The Board intends to construct a school (which will include certain child care facilities) on the Lands and the City has requested that the Board, as part of the Project, cause the Premises to be constructed for purposes of an Operator operating a Family Centre at the

Premises. In this regard, the Board has retained an architectural firm to develop a conceptual plan for the Project (the “**Plan**”), which will include:

- (a) preliminary drawings relating to various aspects of the Project;
- (b) the design criteria which will be utilized in connection with the design, construction and physical appearances of the Project; and,
- (c) a budget itemizing the projected costs for the design and completion of the Project.

(2) Once available, the Board will provide a copy of the Plan to the City, following which the City will have a period of ten (10) days to review the Plan in so far as the Premises are concerned and to provide, in writing, any comments it may have on the Plan. Although the Board agrees to cooperate with the City with respect to design issues relating to the Premises and to take into account the comments the Board receives from the City, the City acknowledges and agrees that the Board will have the right to make the final decision with respect to all design matters related to the Project, including the Premises. The following will also apply in relation to the provision of the Plan to the City:

- (a) if the Plan, in the form first submitted to it, is acceptable to the City, it shall provide written notice of such acceptability to the Board, which shall be deemed to constitute the City’s agreement that it is prepared to proceed with the inclusion of the Premises as part of the Project and to fund and advance to the Board the City’s Proportionate Share of the fees, costs, expenses and other amounts incurred by the Board and involved in and related to the completion of the Project on the basis contemplated in this Agreement, which includes, without limitation:
 - (i) the City’s Proportionate Share of the Contract Price; (ii) the City’s Proportionate Share of Other Costs; and, (iii) an amount equal to thirteen percent (13%) of all of the above amounts to fund the HST exigible when such amounts are paid by the Board to the respective third party;
- (b) if within the aforementioned ten (10) day period the City determines that it is not prepared to participate in the Project, it will advise the Board, in writing, of such determination and, in such circumstances, the Board will proceed with the Project (without construction of the Premises) and the Board’s obligations with respect to the construction of the Premises will be at an end. In such circumstances, the

City will be responsible for paying to the Board: (i) all of the Board's legal expenses incurred by it in connection with the preparation of this Agreement; and (ii) the City's Proportionate Share of all fees, costs and expenses incurred by the Board in connection with the Project up to and including the date on which the City provides the Board with such notice, calculated using the relevant and respective square footages of the floor areas of the building provided for in the Plan;

- (c) if the City provides written comments on the Plan, within the aforementioned ten (10) day period, but the Parties are unable to reach agreement with respect to the Plan within twenty-one (21) days of the Plan being made available to the City, the Board will be entitled to proceed with the completion of the Project without the Premises being included as part of the Project. In such circumstances, the City will be responsible for: (i) the Board's legal expenses incurred in connection with the preparation of this Agreement; and, (ii) the City's Proportionate Share of all fees, costs and expenses incurred by the Board in connection with the Project up to and including the end of such twenty-one (21) day period, calculated using the relevant and respective square footages of the floor areas of the building provided for in the Plan, and the City will promptly pay to the Board the amount of same following the Board's provision of invoices to the City for same; or
- (d) if, within the twenty-one (21) day period referred to in section 2.01(2)(c) above (or such additional period of time as the Board may, in its discretion, decide to continue discussions with the City regarding the Plan), the Parties are able to reach agreement on amendments to the Plan, the Board will provide an amended version of the Plan (the "**Amended Plan**") to the City, and thereafter the City will have a period of five (5) days to advise the Board, in writing, that the City is either:
 - (i) prepared to proceed with the inclusion of the Premises as part of the Project on the basis contemplated in the Amended Plan, in which case such notice will be deemed to constitute confirmation by the City of its obligation to fund and advance to the Board the City's Proportionate Share of the fees, costs, expenses and other amounts incurred by the Board and involved in and related to the completion of the Project on the basis contemplated in this Agreement, which includes, without limitation:

(A) the City's Proportionate Share of the Contract Price; (B) the City's Proportionate Share of the Other Costs; and, (C) an amount equal to thirteen percent (13%) of all of the above amounts to fund the HST exigible when such amounts are paid by the Board to the respective third party; or

(ii) not prepared to participate in the Project, in which case the Board will proceed with the Project (without the construction of the Premises) and the Board's obligations with respect to the construction of the Premises will be at an end. In such circumstances, the City will be responsible for paying to the Board: (A) all the Board's legal expenses incurred by it in connection with the preparation of this Agreement; and (B) the City's Proportionate Share of all fees, costs and expenses incurred by the Board in connection with the Project up to and including the date on which the City provides the Board with notice under this section 2.01(2)(d)(ii) that the City will not be participating further in the Project, including, without limitation, all fees and expenses incurred by the Board relating to the preparation of the Plan and the Amended Plan. For purposes of calculating the amount due under clause 2.01(2)(c)(ii)(B) above, the relevant and respective square footages of the floor areas of the building provided for in the Amended Plan will be utilized.

(3) For purposes of certainty, in all circumstances the City will be responsible for paying to the Board:

- (a) all of the Board's legal expenses incurred in connection with the preparation of this Agreement; and
- (b) the City's Proportionate Share of fees, costs, expenses and other amounts incurred by the Board in connection with the preparation of the Plan and any Amended Plan.

(4) In the event that the City delivers a notice pursuant to section 2.01(2)(a) or section 2.01(2)(d)(i) above, the Board will request the architectural firm that prepared the Plan (who will also be the architectural firm that may be required to prepare an Amended Plan, if applicable), to complete detailed drawings for the Project and to otherwise work with the Board and its other consultants to prepare detailed specifications for a request for tender ("**RFT**") for the Project,

utilizing the Board's standard practices for construction projects (which rely, in part, on CCDC-2 Stipulated Price Contract 2008 published by the Canadian Construction Documents Committee, as amended by the Board for purposes of its construction projects). The RFT will, among other things, request parties submitting tenders to provide an itemized price for all Parking Costs forming part of the Contract Price.

(5) In the event the Board is prepared to accept a tender submitted in response to the RFT which has a Contract Price of \$11,012,000.00 (exclusive of HST) or less, and for which the itemized price for Parking Costs is \$495,000.00 (exclusive of HST) or less, the Board will be permitted to accept such tender without having to obtain the consent of the City and the agreement resulting from the Board's acceptance of such a tender is hereinafter referred to as the "**Contract**". In such circumstances, the following will apply:

- (a) within thirty (30) days of the Board's acceptance of a tender pursuant to the RFT, the City will advance to the Board: (i) the City's Proportionate Share of the Contract Price; plus, (ii) thirteen percent (13%) of the City's Proportionate Share of the Contract Price to fund the HST which will be exigible when such Proportionate Share of the Contract Price is paid by the Board under the Contract. The amount of the advance referred to in the previous sentence will hereinafter be referred to as the "**Initial Advance**". When calculating the part of the Initial Advance which does not relate to or represent Parking Costs, the respective square footages of the floor areas of the respective areas of the building constituting part of the Project (as contained in the detailed specifications contained in the RFT (as opposed to those in the Plan or Amended Plan, as applicable)) will be utilized;
- (b) the Contract will provide for cash allowances which will be addressed and administered by the Board (and its Consultant) in accordance with Part 4 – GC4.1 of the form of the construction agreement the Board has developed for purposes of construction projects and which will be included in the Contract. The Board will be entitled to: administer the cash allowances under the Contract; provide direction to the Contractor in respect thereof; and, otherwise make all decisions relating thereto, so long as the Board is acting reasonably. To the extent that the costs relating to any aspect of the Work for which the Contract has a cash allowance exceed the respective cash allowance, the Parties will be responsible for their respective Proportionate Share of such excess to be

reconciled on the basis of section 2.01(6) below. To the extent that the costs relating to any aspect of the Work for which the Contract has a cash allowance remain unexpended at the completion of the Contract, the Parties will share in such savings based on their respective Proportionate Share, to be reconciled on the basis of section 2.01(6) below;

- (c) the Contract will also provide for contingency allowances. To the extent that during the completion of the Project: unforeseen circumstances arise in the completion of the Work (and which do not represent requests for design or material changes of a discretionary nature); or, coordination issues which arise during the completion of the Project, in any case necessitating a change directive or change order, the cost of such change directive or change order will be charged to such contingency allowance in accordance with the terms of the Contract. It is agreed by the Parties hereto that, provided it is acting reasonably, the Board will have authority to approve all such change directives or change orders. Any such charge to such contingency allowance will be shared and paid for by the Parties on the basis of their respective Proportionate Share;
- (d) to the extent that either Party requests changes in the Work consisting of additions, deletions or other revisions to the Work of a discretionary nature and which do not relate to unforeseen circumstances in the completion of the Project or coordination issues which arise during the completion of the Project (it being agreed that: the City will use every effort to ensure that after the City has provided notice under either sections 2.01(2)(a) or 2.01(2)(d)(i) above the City will not request any changes in respect of the Work; the City will only be able to request changes in respect of the Work which relate to the Premises; and, the Board will have the discretion to approve or reject any such request), the Party requesting any such change will be responsible for all fees, costs, expenses and other amounts associated therewith. To the extent that the City requests a change of the type referred to in this section 2.01(5)(d), and provided the Board is prepared to accept same, the Board shall obtain an estimate for the costs relating to such change and shall advise the City thereof. The City shall then have a period of not more than five (5) days to advise the Board, in writing, as to whether the City wishes to proceed with such change. To the extent that the City elects to proceed with such change, it will be responsible for all of the fees,

expenses, costs and other amounts incurred and which relate to such change and the amount of same will be taken into account and addressed in the context of the reconciliation process contemplated under section 2.01(6) below; and

- (e) regardless of any of the foregoing, the Parties recognize that the contingency allowance for the Contract may be insufficient to cover the costs of changes arising from unforeseen circumstances or co-ordination issues and that the Contract Price may be exceeded as a result thereof. In such circumstances, the Parties shall be responsible for funding their respective share of any such excess on the basis of the principles set forth in this section 2.01(5).

(6) Within thirty (30) days of the date upon which the Board makes payment to the Contractor of the unpaid balance of the Contract Price (less any funds held to satisfy deficiency claims advanced by the Board), pursuant to the Consultant's final certificate for payment under the Contract, the Board will prepare a reconciliation of all of the payments made to the Contractor under the Contract, any amounts withheld under the Contract and otherwise reconciling all amounts expended, saved or owing under the Contract, with reference to the principles set forth in sections 2.01(2)(a), 2.01(2)(c)(i), 2.01(5) and 2.02. For purposes of such reconciliation (or any reconciliation made pursuant to section 2.02(1) below), the Parties' respective Proportionate Share shall be recalculated using the "as built" square footage of the building constituting part of the Project and the Family Centre Building Space, and the responsibilities of the Parties to fund and pay for the respective fees, costs and other amounts contemplated under sections 2.01(5) and 2.02(1) shall be based on such "as built" measurements. Subject to the foregoing, any reconciliation will disclose and provide whether, based on the principles set forth in section 2.01(2), 2.01(5) and section 2.02, any additional amount is owed by the City to the Board over and above the Initial Advance or whether the City is entitled to any reimbursement of the Initial Advance. The City will have a period of ten (10) days to review and comment upon such reconciliation and, in the event there are no matters in dispute between the Parties, either the Board will pay to the City the amount owed by the Board to the City as a reimbursement on the Initial Advance, or the City will pay to the Board the amount owed by the City to the Board over and above the Initial Advance. Given the nature of the Project, the Parties recognize and agree that it may be necessary for the Board to undertake more than one (1) reconciliation. To the extent that the Parties are unable to reach agreement with respect to such reconciliation, the matter will be dealt with in accordance with the provisions of Article 3 below.

(7) Circumstances may arise such that when the Board makes payment pursuant to the Consultant's final certificate for payment under the Contract, the Board may hold back a portion of the Contract Price to satisfy deficiency claims advanced by the Board. In such circumstances, the Board will, acting reasonably, be entitled to resolve all disputes with respect to any such deficiencies and advance or withhold any amounts as it sees fit. At such time as all withheld amounts for deficiencies have been released and all matters relating thereto have otherwise been resolved, the Board will provide the City with a reconciliation in respect thereof to be prepared and otherwise administered on a basis consistent with the principles and concepts outlined in section 2.01(6) above. The City shall be responsible for and pay to the Board (in the context of the reconciliation process referred to under section 2.01(6) above), the City's Proportionate Share of all fees, costs, expenses and other amounts (including legal fees), incurred by the Board in connection with the settlement or other resolution of any disputes related to any such deficiencies.

(8) In the event that the Board does not receive any tenders pursuant to the RFT with a Contract Price of \$11,012,000.00 (exclusive of HST) or less, and for which the itemized price for Parking Costs is \$495,000.00 (exclusive of HST) or less, the Parties will, within five (5) days of the date for the submission of tenders pursuant to the RFT, meet to discuss whether and how they wish to proceed with the Project. In the event that the Parties are unable to reach a resolution and to memorialize their agreement in respect of such resolution within thirty (30) days of the first meeting pursuant to this section 2.01(8), the Board shall be entitled, in its discretion, to elect to proceed with the Project without the involvement of the City and without the inclusion of the Premises as part of the Project. In such circumstances, to the extent not already paid, the City shall promptly pay to the Board: all of the Board's legal expenses in connection with the preparation of this Agreement; the City's Proportionate Share of all costs associated with the preparation of the Plan and any Amended Plan; the City's Proportionate Share of all costs relating to the preparation of the RFT, including, without limitation, fees and expenses for consulting services; and any legal and other out of pocket expenses of the Board incurred by it in connection with trying to reach a resolution with the City in the circumstances described in this section 2.01(8).

(9) For purposes of certainty, in addition to the City's obligation to fund and advance to the Board the City's Proportionate Share of all fees, costs, expenses and other amounts related to the Project under the various provisions of this Agreement, the City will also be responsible for funding and advancing to the Board an amount equal to thirteen percent (13%) of such share of

such fees, costs, expenses and other amounts in respect of HST exigible thereon. Notwithstanding the foregoing, the Board's status from a tax perspective is such that it will receive refunds of the HST exigible in respect of the amounts it pays in respect of fees, costs, expenses and other amounts related to the Project. At such time as TVDSB is in receipt of such refunds, the Board shall repatriate to the City a portion thereof using the reconciliation principles contemplated in section 2.01(6) above.

2.02 Other Costs

(1) Although it is understood and agreed by the Parties that the City will be responsible for funding and advancing to the Board: all of the Board's legal expenses incurred in connection with the preparation of this Agreement; the City's Proportionate Share of all fees, costs and expenses incurred by the Board and relating to the preparation of the Plan and any Amended Plan; the City's Proportionate Share of the Contract Price; and, such other amounts as may be owed by it pursuant to the provisions of section 2.01 above, the City will also be responsible for and will promptly fund and advance to the Board the City's Proportionate Share of all other fees, costs, expenses and other amounts (the "**Other Costs**") incurred by the Board in relation to the Project. As contemplated in and subject to section 2.01(9), in addition to the City's obligation to fund and advance to the Board the City's Proportionate Share of the Other Costs on the basis contemplated above, the City shall also be responsible for funding and advancing to the Board an amount equal to thirteen percent (13%) of the City's share of such Other Costs in respect of HST exigible thereon. For purposes of certainty, the Other Costs may include, but will not be limited to costs relating to the following and which have not been included in the Contract Price:

- (a) surveying, geotechnical and topographical matters and services;
- (b) engineering and other building science fees;
- (c) consulting services (including, without limitation, those services addressed or implicit in sections 2.01 above and otherwise involved from the conception to the completion of the Project, which include, but are not limited to, consulting services relating to the preparation of the RFT and the administration of the Contract and construction liens relating to the Project);
- (d) legal services, including, without limitation, services relating to the administration of the Contract and construction liens;

- (e) building permit fees, sign permit fees, development charges and impost or other fees, if any;
- (f) insurance;
- (g) labour;
- (h) materials, supplies, services and any other similar or capital costs; and
- (i) any other costs relating to the conception, design, development and completion of the Project, whether or not contained herein.

Other Costs and any HST thereon will be subject to and addressed in the context of, the reconciliation process contemplated under section 2.01(6) above; provided, however, that, to the extent that any Other Costs are not identified until after such reconciliation process, the City shall fund and advance to the Board the City's Proportionate Share of any such Other Costs and any HST thereon (calculated on the basis provided for in this section 2.02), promptly after such time as the Board advises the City thereof.

(2) Notwithstanding any other provision of this Agreement, under no circumstances will the City have any obligation to pay to the Board any amount in respect of the amount paid by the Board for its purchase of the Lands.

2.03 Lien Holdbacks

The Board will be responsible for administering the appropriate holdback for each payment for the design and completion of the Project in accordance with the *Construction Lien Act* (Ontario).

2.04 Project Contact Persons

The Executive Officer, Facility Services and Capital Planning or his designate (the "**Board's Project Manager**") will represent the Board in all matters relating to the design and completion of the Project. Any communications, whether written, electronic or verbal in form, from the City, or any agent thereof, will be given to the Board's Project Manager at the following address:

Kevin Bushell, Executive Officer
Facility Services and Capital Planning
951 Leathorne Street
London, Ontario, N5Z 3M7
Facsimile No.: (519) 452-2411
E-mail: k.bushell@tvdsb.on.ca

The Manager, Children's Services (the "**City's Project Manager**") will represent the City in all

matters relating to the design and completion of the Project. Any communications, whether written, electronic or verbal in form, from the Board, or any agent thereof, will be given to the City's Project Manager at the following address:

Ian Gibb, Manager, Children's Services, or his designate
151 Dundas Street, P.O. Box 5045
London, Ontario N6A 4L6
Facsimile No.: (519) 661-5821
E-mail: igibb@london.ca

2.05 Financial Records

The Board will: maintain reasonable financial and accounting books and records with respect to all amounts expended by the Board in relation to the conception of and completion of the Project, as well as the use and disbursement of funds provided by the City pursuant to this Agreement; allow the City or such other persons appointed by the City to inspect said books and records at all reasonable times and to take copies thereof; and, provide the City with such information as it may reasonably request in connection with the Project (subject always to the application of applicable privacy legislation that would expressly prohibit same). For purposes of certainty, however, to the extent that the City elects not to proceed with its participation in the Project (as contemplated in section 2.01(2) above), the City's rights under this section 2.05 will only be in relation to costs and expenses incurred to the point in time of the delivery of the applicable notice by the City under section 2.01(2). In addition, to the extent that the Board completes the Project without the involvement of the City, in circumstances where the monetary thresholds referred to in section 2.01(8) above have been exceeded, the City's rights under this section 2.05 will only be in relation to costs and expenses for which it has a funding obligation. Regardless, in all circumstances, the Board's obligations under this section 2.05 will end on the second (2nd) anniversary of the date of this Agreement.

2.06 Family Centre Activities

(1) Assuming the Project is completed with the involvement of the City, the City will be responsible for:

- (a) suggesting the nature and types of services which will be offered as part of the Family Centre to be operated within the Premises; provided that, the Board will have the authority to limit the conduct of any activities or types of activities in its absolute discretion; and

- (b) identifying and recruiting, from time to time, suitable entities to operate a Family Centre within the Premises.

For purposes of certainty, in no circumstances will the Board have any obligation to identify or recruit any Operator. Furthermore, the Board will have no obligation whatsoever to monitor or oversee any Operator, or to determine whether any Operator is fulfilling any particular objectives identified by any party whomsoever. If an Operator ceases to conduct operations (prior to the tenth (10th) anniversary of the date of this Agreement), the Board will use reasonable efforts to inform the City of such occurrence within three (3) weeks of the Board's becoming aware of same.

(2) Assuming the Project is completed with the involvement of the City and subject to the City otherwise fulfilling its obligations under this Agreement, if within a period of ten (10) years from the date of this Agreement, the Board ceases to make the Premises available to a qualified Operator, other than for any of the following reasons:

- (a) the City failing to identify, or there is otherwise no availability of, a qualified Operator which is acceptable to the Board, acting reasonably and with due regard to the obligations, policies and procedures of the Board. For purposes of certainty, the Board will be entitled to elect not to enter into a lease for the Premises with any Operator whom the Board, acting reasonably, determines is not acceptable to it;
- (b) any proposed Operator failing to enter into the Board's form of lease for the Premises, being such form as may be required by the Board, from time to time;
- (c) any operations carried on, or proposed to be carried on, within the Premises in any way impinging upon or negatively affecting (or in either case which could reasonably be anticipated to impinge upon or negatively affect), the Board's ability to fulfill its obligations under, or to otherwise comply with any requirements under, any legislation, governmental rules, directives or orders and/or the Board's own policies and procedures, including, without limitation, the obligation of the Board to give assiduous attention to the health, safety and comfort of its students;
- (d) the breach or default by any Operator of any obligations owed or owing by it to either the Board or the City, including, without limitation, the terms and conditions

of any agreements between the Board and such Operator, compliance with the Board's policies and procedures, compliance with the Board's rules in respect of the Lands and its operations thereon, or any failure to carry any insurance as may be required to be carried by such Operator;

- (e) the breach or default by the City of any of its obligations under this Agreement; or
- (f) a Family Centre is not permitted to be operated at the Premises under an NF zoning designation,

the Board will reimburse the City for a portion of the City's Proportionate Share of the Contract Price, calculated on the following basis:

- (i) If such event occurs within twelve (12) months from the date of the substantial completion of the Project, the Board will reimburse the City for one hundred percent (100%) of the City's Proportionate Share of the Contract Price.
- (ii) If such event occurs more than twelve (12) months after the substantial completion of the Project, the portion of the City's Proportionate Share of the Contract Price to be reimbursed to the City by the Board will be reduced by ten percent (10%) for each twelve (12) month period that has elapsed from the substantial completion of the Project. By way of example, if the aforementioned event occurs after the ninth (9th) anniversary of the date of the substantial completion of the Project, but prior to the tenth (10th) anniversary of the date of the substantial completion of the Project, only ten percent (10%) of the City's Proportionate Share of the Contract Price will be required to be reimbursed to the City.

(3) Notwithstanding any of the foregoing, if at any time prior to the tenth (10th) anniversary of the substantial completion of the Project the Premises is not operated as a Family Centre for a period of twelve (12) consecutive months or longer, due to any of the reasons specified in subsection 2.06(2)(a) through (e) above, the Board may, in its discretion, use the Premises at all times thereafter for such purposes as it may, in its discretion, determine and no amount or compensation will be payable to the City as a result thereof.

(4) Notwithstanding any other term of this Agreement, the Parties hereto agree that, after the tenth (10th) anniversary of the substantial completion of the Project, the Board will have no obligation to reimburse the City for any amount funded or paid by the City pursuant to this Agreement, regardless of the circumstances. In addition, the provisions of this section 2.06 will only be of application in circumstances where the Project is completed with the involvement of the City and if the City has otherwise fulfilled its obligations under this Agreement.

2.07 Ownership

The City hereby acknowledges, covenants and agrees that nothing contained in this Agreement will provide the City (or any party other than the Board), with any ownership interests (beneficial or otherwise), in the Premises, the Project, the Lands or the part thereof. Furthermore, the City hereby acknowledges and agrees that the Board will have the unfettered authority to restrict the nature of any of the operations within the Premises to the extent that the Board determines, acting reasonably, that: (1) it is necessary to do so in order for it to comply with or otherwise adhere to any legislation affecting it, any governmental directives, rules or orders applicable to it and any of the Board's own policies and procedures, in effect, from time to time; or, (2) any aspects of the operations are inconsistent with the environment the Board wishes to create or maintain for its students. Finally, the City acknowledges and agrees that the Board will have unfettered discretion to:

- (a) establish rules and issue directives in respect of access to and egress from the Premises;
- (b) establish rules and issue directives in respect of parking arrangements for the Operator, its invitees and other users of the Premises;
- (c) restrict access to and use by the Operator, its invitees and other users of the Premises of any and all parts of the Project and Lands not forming part of the Premises; and
- (d) establish the terms and conditions upon which the Premises may be leased to an Operator, which will include and address, among other things, rights of ingress and egress to the Premises.

ARTICLE 3 - ARBITRATION

3.01 Arbitration

If any dispute arises between the Parties with respect to the meaning or effect of any provision of this Agreement, or related to the rights and obligations of the Parties hereunder, each of the Parties will appoint one representative and such representatives will work diligently and cooperatively to resolve the dispute on a timely and collaborative basis for up to ninety (90) days. In the event the dispute is not resolved after these ninety (90) days, the question or matter in dispute will be referred to a single arbitrator. The decision made by the arbitrator will be final and binding upon the Parties hereto, their heirs, executors, administrators and assigns. In the event that the Parties do not agree upon an arbitrator within thirty (30) days then either Party may petition a judge of the Ontario Superior Court of Justice to appoint an arbitrator. The cost of arbitration will be apportioned between the Parties as the arbitrator may decide.

ARTICLE 4 - GENERAL

4.01 Force Majeure

Notwithstanding any other provision contained herein, in the event that either the Board or the City should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act will be postponed for a period of time equivalent to the time lost by reason of such delay. The Parties will share any costs incurred in completing the Project due to any strikes or lock-outs on the basis of their respective Proportionate Share. The provisions of this Section 4.01 will not, however, under any circumstances, operate to excuse the City from prompt payment of amounts due to the Board pursuant to the terms of this Agreement.

4.02 Effect of Waiver or Forbearance

No waiver by any Party of any breach by any other Party of any of its covenants, agreements or obligations contained in this Agreement will be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor will any forbearance by any Party to seek a remedy for any breach by any other Party be a waiver by

the Party so forbearing of its rights and remedies with respect to such breach or any subsequent breach.

4.03 Notices

Subject to the provision of Section 2.04 hereof, any notice or delivery of a document or payment to the Parties hereunder may be delivered personally, by prepaid courier or by e-mail to the address for such Party as set out below:

To the Board:

Thames Valley District School Board
951 Leathorne Street
London, ON N5Z 3M7
Attention: Kevin Bushell, Executive Officer - Facility Services and Capital
Planning
E-mail: k.bushell@tvdsb.on.ca

To the City:

The Corporation of the City of London
151 Dundas Street, P.O. Box 5045
London, ON N6A 4L6
Attention: Ian Gibb, Manager, Children's Services
E-mail: igibb@london.ca

A Party may change its address particulars for purposes of this section 4.03, from time to time, by notice in writing. For purposes of this section 4.03:

- (a) "Business Day" meaning Monday through Friday, inclusive, so long as any such day is not a statutory holiday in the Province of Ontario; and
- (b) "Normal Business Hours" means 8:00 AM (Eastern Standard Time) to 5:00 PM (Eastern Standard Time) on a Business Day.

Notices sent by e-mail will be deemed to have been received on the date sent, so long as such e-mail is sent during Normal Business Hours (and so long as the sender shall not have received an 'undeliverable' reply), failing which it will be deemed to have been received on the next Business Day. Notices or deliveries delivered personally or sent utilizing a delivery service will be deemed to have been received on the date delivered, so long as such delivery is made during Normal Business Hours. For purposes of certainty, delivery of payments of money are to be made personally or by prepaid courier.

4.04 Number, Gender, Effect of Headings

Words importing the singular number only will include the plural and *vice versa*, words importing the masculine gender will include the feminine and neuter genders, and words importing

persons will include firms and corporations and *vice versa*. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only, and will not affect the construction or interpretation of this Agreement.

4.05 Assignment and Amendments

Neither Party may assign this Agreement without the express written consent of the other, which may be unreasonably withheld. No amendment, variation or change to this Agreement will be binding unless the same will be in writing and signed by the Parties.

4.06 Successors and Assigns

The rights and liabilities of the Parties will enure to the benefit of their respective successors and permitted assigns.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

THAMES VALLEY DISTRICT SCHOOL BOARD

Per: _____

Print name: _____

Per: _____

*Print name*_____

THE CORPORATION OF THE CITY OF LONDON

Per: _____

Matt Brown, Mayor

Per: _____

Catharine Saunders, City Clerk

SCHEDULE 1

FAMILY CENTRE

Family Centres are anticipated to provide one or more of the following programs and/or services:

- **Parenting, Early Learning, Child and Family Programs**, such as parenting strategies, literacy and numeracy programs and play groups;
- **Health and Wellness Programs**, such as pre and post natal programs and early screening and assessment programs;
- **Early Childhood Education and Child Care** such as non-instructional day school age care, pre-kindergarten early learning programs and centre based licensed child care;
- **Referral, Resources, Information and Awareness** functions, such as child care fee subsidy information and access, basic needs supports and income support referrals;
- **Recreation, Sports and Leisure within the Premises**, such as physical activity program, arts/culture program and summer “extended” programming, so long as such activities and programs occur within the Premises itself; and/or
- **Links/Interface to Specialized Services**, such as special needs and children’s mental health programs.

SCHEDULE 2

LANDS

Block 82, Plan 33M622; Subject to an easement in gross over Part 1, Plan 33R-17995
as in ER806049; City of London, County of Middlesex, PIN 08138-0693 (LT).

SCHEDULE 4

PREMISES

The following summarizes the critical functional space, approximate area requirements and associated mechanical and electrical systems for the Premises.

Overall

- Approximately 4281 ft.²

Exterior and Access

- Parking for 30 vehicles
- Service vehicle access
- Welcoming landscaping, benches, lighting, bike racks, etc.

Lobby and Reception

- Approximately 250 to 350 ft.²
- Reception desk, information displays
- Coat room, cubby area and car seat and stroller parking
- Small comfortable sitting area with seating for both adults and children
- Connection points (e.g. doors, windows) to all other areas of the Centre

Program Areas

- Approximately 2000 to 2500 ft.²
- Clinic Area – one small waiting room and two small examination rooms
- Playrooms/Meeting/Multipurpose Rooms - two rooms each approximately 600 to 750 ft.²
 - One room fixtured primarily for activities by children under the age of 6.
Includes washrooms
 - The second room sub-dividable using partition walls
- Information and Resource Library – office or alcove area with digital display capability, shelves for literature, resource binders etc.
- Small Meeting Areas - two small office areas with seating for 2 to 3 people; access to technology, etc.
- Storage for Basic Needs, Parenting Supplies, Program Supplies- secure storage area or closet

Support Areas

- Approximately 750 to 1,000 ft.²
- One office for Centre management
- InterProfessional Lounge - One room with multiple accessible workspaces, lockable storage, open discussion area with seating
- Small Meeting/Board room - for 10 to 20 people
- Food-service – small commercial kitchen
- Washrooms - two publicly accessible washrooms (adult, child, family, and handicap)

Mechanical/Electrical Systems

- HVAC
- Security system
- Exterior lighting
- Local area network

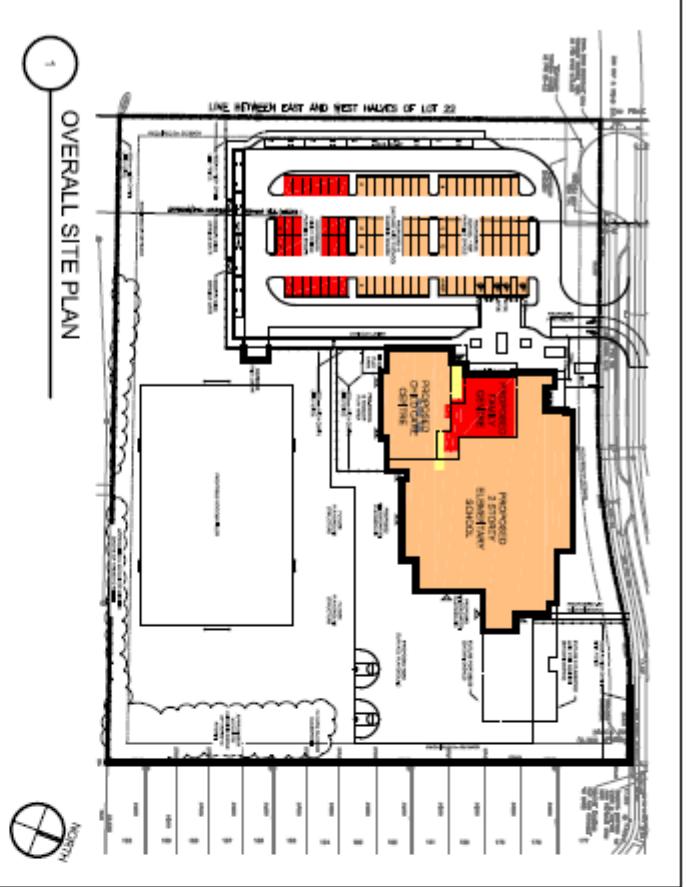
An initial floor plan for the Family Centre Building Space is shown in the drawings forming part of Schedule 5 hereto.

SCHEDULE 5

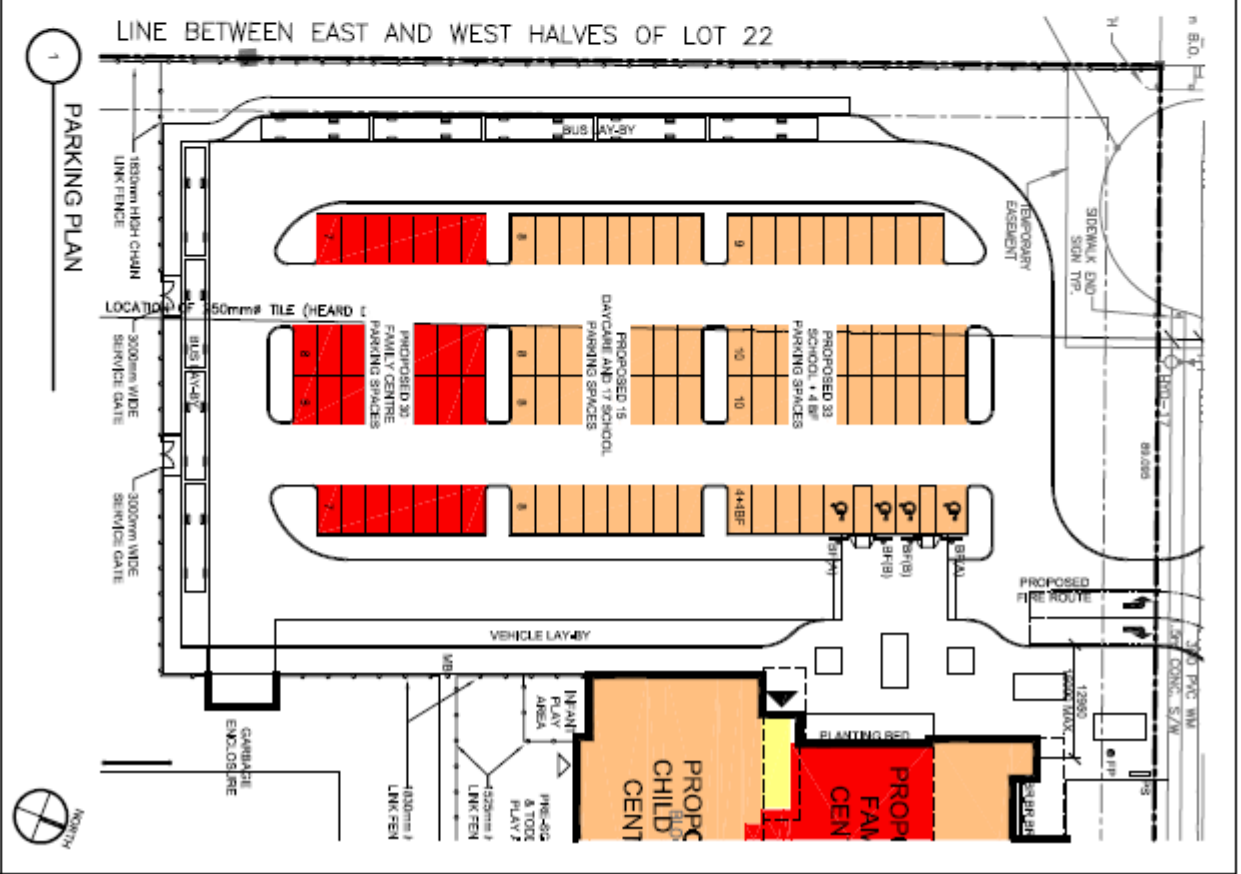
PROJECT

The Project consists of the following:

- 1. 65,950 sq. ft. institutional building containing:**
 - 533 pupil place elementary school (53,980 sq. ft.)
 - Childcare Facility (7,689 sq. ft.)
 - Family Centre (4,281 sq. ft.)
- 2. Site servicing:**
 - Sanitary
 - Storm
 - Water
 - Electricity
 - Natural Gas
 - Telecommunications
- 3. Site grading and seeding/sodding**
- 4. Parking facilities including; drop-off/pick-up, bus bays and short term parking**
- 5. Playing fields**
- 6. Play areas**
- 7. Sidewalks and canopies**
- 8. Garbage enclosure**
- 9. Site fencing**
- 10. Furniture and equipment do not form part of the Project.**
- 11. See following drawings.**

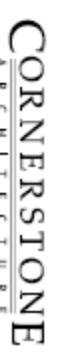


- FAMILY CENTRE PARKING SPACES
 - SCHOOL & CHILD CARE PARKING SPACES
- TOTAL PARKING SPACES : 99 (95 + 4 BARRIER FREE)
- SCHOOL AND CHILD CARE PARKING SPACES : 89 (85 + 4 BARRIER FREE)
- FAMILY CENTRE PARKING SPACES : 30
- FAMILY CENTRE PARKING AS A % OF TOTAL PARKING SPACES : 30%



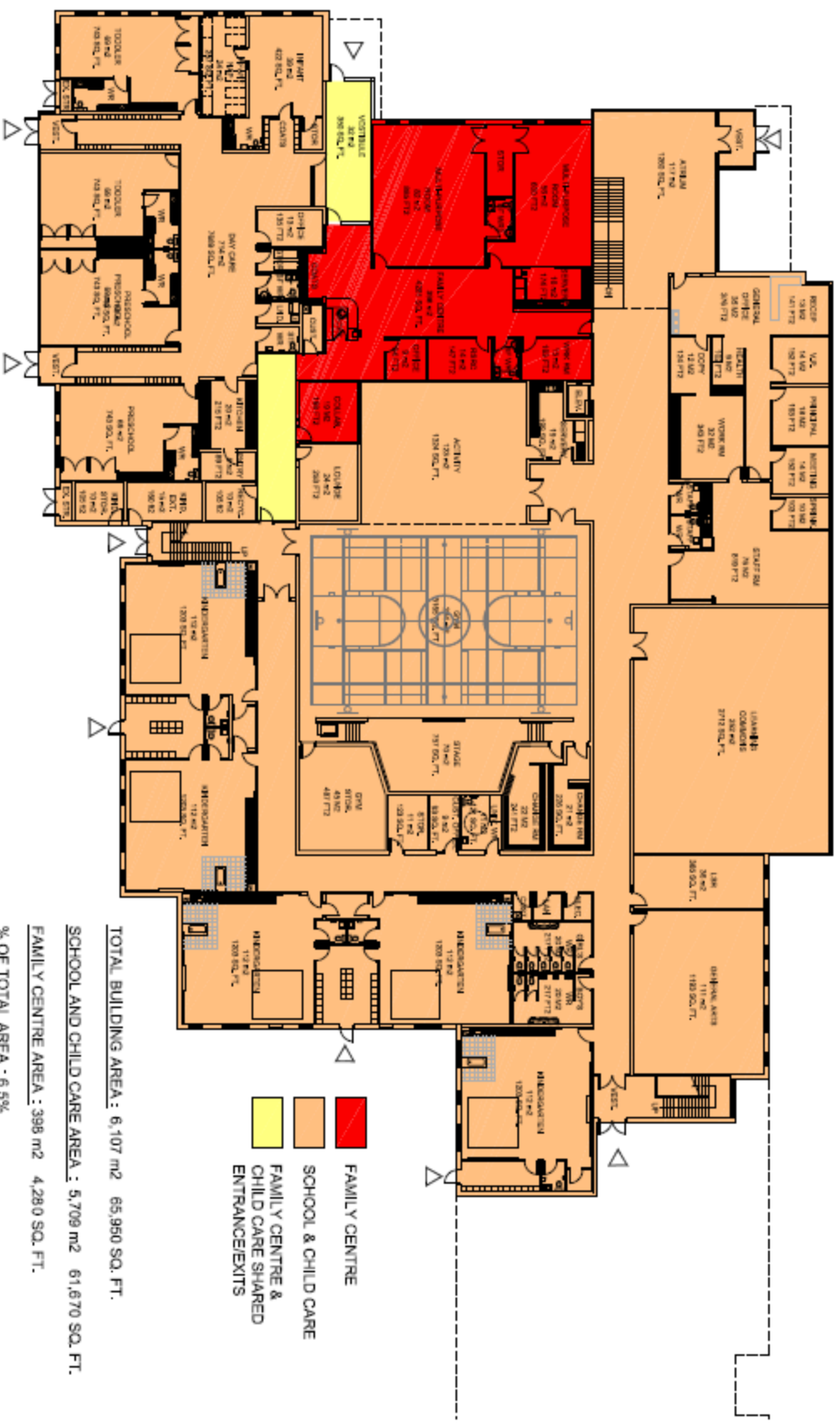
NEW NORTHWEST PUBLIC SCHOOL

04 FEBRUARY 2016



CORNERSTONE
ARCHITECTURE

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TOTAL BUILDING AREA : 6,107 m² 65,960 SQ. FT.
 SCHOOL AND CHILD CARE AREA : 5,709 m² 61,670 SQ. FT.
 FAMILY CENTRE AREA : 398 m² 4,280 SQ. FT.
 % OF TOTAL AREA : 6.5%

- FAMILY CENTRE
- SCHOOL & CHILD CARE
- FAMILY CENTRE & CHILD CARE SHARED ENTRANCE/EXITS

1 GROUND FLOOR PLAN



NEW NORTHWEST PUBLIC SCHOOL

04 FEBRUARY 2016

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