

<b>TO:</b>	<b>CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE NOVEMBER 15, 2016</b>
<b>FROM:</b>	<b>LYNNE LIVINGSTONE MANAGING DIRECTOR NEIGHBOURHOOD, CHILDREN AND FIRE SERVICES</b>
<b>SUBJECT:</b>	<b>NORTHWEST LONDON FAMILY CENTRE - PROVINCIAL INVESTMENT AND NEW AGREEMENT</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director of Neighbourhood, Children and Fire Services:

- a) The attached proposed By-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting to be held on November 22, 2016 to approve a Funding and Project Agreement (Appendix B – Schedule 1) between the Corporation of the City of London and the Thames Valley District School Board for the construction of a neighbourhood Family Centre at a new public elementary school being constructed in Northwest London;
- b) The Mayor and Clerk **BE AUTHORIZED** to execute the agreement approved in (a) above.

It being noted that:

- This new Funding and Project Agreement replaces the agreement approved by Council on March 1, 2016 because of subsequent investment in funding from the Ministry of Education.
- This is the second of three reports to be brought forward in November 2016 relating to the increased Ministry of Education financial support for the establishment of neighbourhood Family Centres. The other two reports relate to this investment for Family Centres in Northeast London and at St. Francis Catholic Elementary School in the Westminster planning district.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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- Neighbourhood Family Centre: London District Catholic School Board: St. Francis Catholic Elementary School – March 30, 2016
- Neighbourhood Family Centre: Thames Valley District School Board: Northwest London New Public School – February 17, 2016
- Neighbourhood Family Centre: Thames Valley District School Board: Northeast London New Public School – February 17, 2016
- London’s Child and Youth Network: Family-Centred Service System Impact Assessment – December 15, 2015
- Neighbourhood Family Centre: Thames Valley District School Board: Lord Nelson Public School Update – November 17, 2014
- Neighbourhood Family Centre: Thames Valley District School Board: Lord Nelson Public School – March 24, 2014
- Child Care Funding Formula Update – April 8, 2013 (Established Child Care and Early Years Childhood Development Reserve Fund)
- Neighbourhood Family Centre: Thames Valley District School Board: White Oaks Public School – January 21, 2013
- Child and Youth Agenda II – “The Best for Our Children, Youth and Families II – The Next Three Years of London’s Child and Youth Agenda to 2015” – November 2012
- Dr. Charles Pascal Report: With our Best Future in Mind, Implementing Early Learning in Ontario – July 20, 2009

## BACKGROUND

### **Purpose**

The purpose of this report is to: summarize recent Ministry of Education announcements regarding capital funding for child and family centres in London; and to present for consideration a new Funding and Project Agreement between the Corporation of the City of London and the Thames Valley District School Board (TVDSB) which reflects the significantly reduced financial contribution the City will provide to construct a Family Centre as part of the School Board's construction of a new school in Northwest London.

### **Background**

In November 2015, the Ministry of Education announced capital funding allocations to the TVDSB to build two new elementary schools in Northeast and Northwest London, to be completed by September 2017. Each of the new schools will also include an 88 space child care centre.

On March 1, 2016, Council authorized Civic Administration to enter into a contract for the construction of Family Centres in both the new Northeast and the Northwest public schools being constructed by the Thames Valley District School Board. An additional agreement was authorized by Council on March 30, 2016 for the construction of a Family Centre at St. Francis Catholic School with the London District Catholic School Board.

The original agreement held the City of London responsible for the costs associated with the addition of the Family Centres to the Ministry approved Child Care and School Facility. Under the original agreement, the total projected cost to construct the Family Centres in both the Northeast and Northwest elementary schools in London was \$1,958,000. This amount was approved for funding by Council on March 1, 2016, using 100% Provincial funding from the Child Care and Early Childhood Development Reserve Fund.

In addition to the two projects with the TVDSB, a third agreement was entered into with the London District Catholic School Board (LDCSB) for the construction of a Family Centre at St. Francis Catholic School for which the City of London was responsible for \$973,500 of the construction costs. The total cost previously approved by Council for the construction of the three Family Centres was \$2,931,500.

### **New Ministry of Education Capital Funding**

In May 2016, the Ministry of Education provided an opportunity for school boards to submit, in partnership with local Consolidated Municipal Service Managers (CMSMs), additional capital funding requests for the construction of Family Support Programming space in previously approved Ministry of Education capital projects. This was the first time the Ministry of Education provided this opportunity to school boards and CMSMs.

The TVDSB and the City of London jointly submitted an application for funding for the Northeast and Northwest Family Centres, previously supported by Council on March 1, 2016. As a result of this application, the Ministry of Education has provided a funding allocation of \$880,000 to the TVDSB for the construction of a Family Centre in Northeast London and \$920,000 for the construction of a Family Centre in Northwest London.

In addition, the LDCSB and the City of London jointly submitted an application for funding for a Family Centre at St. Francis Catholic School, previously supported by Council on March 30, 2016. As a result of this application, the Ministry of Education has increased its total funding allocation to the LDCSB to \$1,182,401 for the construction of a Family Centre at St. Francis Catholic School.

In summary, as a result of the collaborative submissions for previously approved capital projects, the Ministry of Education has invested a total of \$2,982,401 for the construction of three Family Centres in London. As a result of this increased investment by the Ministry of Education, the required investment by the City of London will be significantly lower than the \$2,931,500 previously approved by Council; the adjusted cost to the City of London for the construction of the three Family Centres is now anticipated to be \$581,557.

Due to the change in municipal investment, a new report and new Funding and Project Agreement are being brought forward for each of the three Family Centres.

## **Funding and Project Agreement for a Family Centre in Northwest London**

Attached as Appendix B - Schedule 1 is a proposed new Funding and Project Agreement establishing the conditions, standards, and timelines by which the relationship between the City of London and the TVDSB will be governed for the construction of the Family Centre in the New Northwest London Elementary School. This new Funding and Project agreement replaces the current Funding and Project Agreement between the City of London and the TVDSB, previously approved by Council in March 1, 2016.

A new agreement was developed to reflect the change in contributions by the City of London and the TVDSB as a result of the Ministry of Education's allocation. The previous agreement committed the City of London to a proportionate share of the entire school project to cover the full cost of the Family Centre in Northwest London. The new Funding and Project Agreement commits the City of London to paying costs that are not covered by the Ministry of Education's allocation of \$920,000 for the Family Centre construction in Northwest London.

### **Risk Considerations**

The Funding and Project Agreement does not include a Hold Harmless and Indemnification clause, which would require TVDSB to defend and indemnify the City against third party claims. This exposes the City to liability from third party claims arising out of the Agreement; however, in the opinion of Risk Management, this should not stop the City of London from moving forward with final approval of the Agreement as the potential benefits of this project outweigh the risks. The proportionate share of such liability is significantly decreased due to the investment of the Ministry of Education.

The TVDSB has been an active and committed partner in the development of the Family-Centred Service System strategy of the Child and Youth Network which includes the continued expansion of the network of Family Centres in schools. Currently, there are three Family Centres located in TVDSB schools, of which all are operating successfully. Therefore, it is recommended that the City proceed with this Agreement.

The Ministry of Education allocation to the Thames Valley District School Board explicitly earmarks the funds for the construction of Family Support Program space in the Northwest school and cannot be used for any other purpose.

<b>FINANCIAL IMPACT</b>
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Funding for the Family Centre in the Northwest Public School in the amount of \$1,012,000 was previously approved by Council using 100% Provincial funding from the Child Care and Early Childhood Development Reserve Fund. The additional investment by the Ministry of Education via the Thames Valley District School Board means a much smaller contribution by the City is now required than was previously approved under the original agreement.

The estimated total cost of the project to the City of London is now projected to be \$137,323 and represents costs that are beyond the Ministry of Education allocation to the Thames Valley District School Board. This estimate is based on the cost sharing arrangement outlined in the Funding and Project Agreement and reflects the total estimated project cost (including construction costs, fees, disbursements, etc.) plus a 10% contingency for unforeseen costs. This much smaller contribution by the City of London means that the anticipated drawdown from the Child Care and Early Childhood Development Reserve Fund will be \$874,677 less than originally anticipated.

There is a high degree of confidence that the Family Centre construction costs will not exceed the estimated amount. The possibility of significant cost overruns is mitigated by the following:

- In the capital allocation to the TVDSB, the Ministry of Education holds the school board accountable to construct within the allocation and will be ensuring that the costs of this project do not exceed Ministry benchmarks
- The Thames Valley District School Board has demonstrated experience as a Project Manager in two previous Family Centre projects, delivering both projects on time and within the tendered budget

## Conclusion

The new Funding and Project agreement reduces the City of London's contribution to the Family Centre in Northwest London by approximately \$874,677. The Ministry's significant investment in the Child and Youth Network's strategy of creating Family Centres in schools, with integrated child care, is a recognition of the effectiveness of the ongoing and well-established collaborative partnerships in the community. These partnerships and vision have enabled the Child and Youth Network to leverage such opportunities for funding. The development of a common vision over 8 years ago and the hard work to implement that vision has positioned London as a leader in transformative change for the system of services that support children, youth and families in Ontario. The Ministry of Education's substantial investment recognizes and supports the good work occurring in London.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>Adrienne Small Manager I, Children's Services Neighbourhood, Children and Fire Services</b>	<b>Trevor Fowler Manager, Children's Services Neighbourhood, Children and Fire Services</b>
<b>SUBMITTED BY:</b>	
<b>Lynne Livingstone Managing Director, Neighbourhood, Children and Fire Services</b>	

## APPENDIX A

Bill No.  
2016

By-law No.

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 the Ministry of Education has announced funding for the Board of \$ 920 000 towards the capital costs to construct a child and family centre within the project

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 will not exceed \$137, 323.00

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. 2.02(c), to request changes to the Work, and to advise the Board in writing whether to proceed with such change;
  - (ii) under ss. 2.03(c)(ii), to review and comment upon any reconciliation; and
  - (iii) under ss.4.01 to identify and assist in recruiting an Operator, 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 6.03 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.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2016

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First reading -  
Second reading –  
Third reading-

**APPENDIX B**

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

**THIS AGREEMENT** made as of the            day of            , 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 parties entered into an agreement dated May 2, 2016 with respect to the construction of the Premises (as defined below), which is to be constructed as part of the Project (as defined below) (the “**May 2016 Agreement**”);

**AND WHEREAS** the Ministry of Education has announced conditional funding (the “**Provincial Funding**”) for the Board of \$920,000.000 towards the capital costs of the construction of the Premises, thereby substantially altering the basis upon which the Parties’ previously agreed upon financial arrangements for the construction of the Premises had been negotiated;

**AND WHEREAS** the Board developed a plan for the Project (the “**Plan**”), which included:

- (a) drawings relating to various aspects of the Project; and

- (b) the design criteria which will be utilized in connection with the design, construction and physical appearance of the Project;

**AND WHEREAS** the Plan was shared with and approved by the City;

**AND WHEREAS** the Board prepared and released a request for tender (“**RFT**”) for the Project;

**AND WHEREAS** the lowest bid in respect of the RFT had:

- (a) a Contract Price (excluding HST) of \$12,019,600.00; and
- (b) an itemized price for parking (excluding HST) of \$302,000.00;

**AND WHEREAS** the Board accepted the aforementioned bid and has entered into a stipulated price construction contract (the “**Contract**”) for the Project with the party that submitted said bid;

**AND WHEREAS** the parties hereto are entering into this Agreement on the understanding that it will cancel, supersede and replace the May 2016 Agreement;

**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 Paramountcy**

The May 2016 Agreement is hereby cancelled, and this Agreement reflects all of the parties’ understandings with respect to the subject matter hereof and in all respects supersedes and replaces the May 2016 Agreement.

### **1.02 Definitions**

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

“**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 seventy percent (70%) 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 Change Costs"** has the meaning given in section 2.02(c) below;

**"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 percent (30%) 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 the recitals of this Agreement;

**"Contractor"** means the party identified as the "Contractor" under the Contract;

**"Contract Price"** means the amount stipulated as the "Contract Price" under the Contract;

**"CRA"** has the meaning given in section 2.05 below.

**"Determination Date"** has the meaning given in section 2.05 below.

**"Determined Percentage"** has the meaning given in section 2.05 below.

**"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;

**"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”** means fees, costs and expenses related to the Project, but not included in the Contract Price and 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 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.

For purposes of certainty, Other Costs do not include any amount paid by the Board for its purchase of the Lands.

**“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 the recitals of this Agreement;

**“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.

### **1.03 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 which includes the construction of the Premises for purposes of an Operator operating a Family Centre at the Premises.

(2) Given the City’s overall interest in seeing the Premises constructed, the City hereby agrees to fund and advance to the Board:

- (a) 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, which includes, without limitation: (i) the City’s Proportionate Share of all costs related to the preparation of the Plan and any other plans, architectural and engineering drawings as may be undertaken for purposes of the Project; (ii) the City’s Proportionate Share of the Contract Price (and any amount over and above the Contract Price as contemplated in section 2.02(d) below); (iii) the City’s Proportionate Share of Other Costs; (iv) the City’s Proportionate Share of amounts related to the settlement or other resolution of any disputes with respect to deficiencies under the Contract (as contemplated in section 2.04 below); and, (v) an amount equal to 2.16% of all of the above amounts (for which HST is payable by the Board), to fund the Board’s obligations in respect of HST (net of applicable

rebates) in respect of any HST exigible when such amounts are paid by the Board in the first instance;

- (b) PLUS all of the Board's legal expenses incurred in connection with the preparation of the May 2016 Agreement and this Agreement, plus an amount equal to 2.16% of such expenses (to fund the Board's obligations in respect of HST (net of applicable rebates) in respect of HST exigible when such expenses are paid by the Board in the first instance);
- (c) PLUS one hundred percent (100%) of the City Change Costs (as contemplated in section 2.02(c) below), together with an amount equal to 2.16% of any of the City Change Costs for which HST is payable by the Board (to fund the Board's obligations in respect of HST (net of applicable rebates) in respect of HST exigible when such costs are paid by the Board in the first instance); and
- (d) LESS the amount of the Provincial Funding actually received by the Board.

## **2.02 Cash Allowances, Contingency Allowances and Requested Changes**

The Parties further acknowledge and agree that:

- (a) the Contract provides 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;
- (b) the Contract provides 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;

- (c) 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 it 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 2.02(c), 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 (the “**City Change Costs**”) 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 processes contemplated under section 2.03 below; and
- (d) 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 proportionate respective share of any such excess.

### **2.03 Reconciliations**

- (a) Within sixty (60) 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), the Board will prepare a reconciliation of all amounts expended by it in connection with the Project,

including, without limitation, amounts expended, saved or owing under the Contract.

- (b) Given the nature of the Project, the Parties recognize and agree that it may be necessary for the Board to undertake additional reconciliations after the one specified in section 2.03(a) above, as certain costs related to the Project are determined.
- (c) Any reconciliation undertaken by the Board shall be subject to the following:
  - (i) despite the percentage used in this Agreement, the Parties' respective Proportionate Share shall be recalculated using the "as built" square footage measurements of the building constituting part of the Project and the Family Centre Building Space;
  - (ii) the primary purpose of any reconciliation is to determine whether, based on the principles of sections 2.01(2) and 2.02 above, any amount is owed by the City to the Board (i.e. the amount of the Provincial Funding actually received by the Board is less than the aggregate of the obligations the City has agreed to fund under this Agreement);
  - (iii) the City will have a period of thirty (30) days to review and comment upon any reconciliation and, in the event there are no matters in dispute between the Parties, the City will pay to the Board the amount, if any, indicated as being owing by the City to the Board in said reconciliation; and
  - (iv) to the extent that the Parties are unable to reach agreement with respect to any reconciliation, the matter will be dealt with in accordance with the provisions of Article 6 below.

#### **2.04 Holdbacks**

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. 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). Regardless, the City shall be responsible for 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.

## **2.05 HST**

Sections 2.01(2)(a) and (b) above contemplate that the City will be responsible for funding its Proportionate Share of the Board's HST payment obligations (net of applicable rebates) in connection with the specified costs, expenses and other amounts paid by the Board in connection with the Project. Section 2.01(2)(c) above contemplates that the City will be responsible for funding 100% of the Board's HST payment obligations (net of applicable rebates) in connection with City Change Costs. For these purposes, the parties have estimated that the Board's HST payment obligations (net of applicable rebates) will be 2.16% of the applicable costs, expenses and other amounts to be paid by the Board in the first instance. The Board has made an application to the Canada Revenue Agency ("**CRA**") for a ruling to confirm what the Board's obligations in respect of HST (net of applicable rebates) will be (the "**Net Obligations**"). If at any time it is determined (the "**Determination Date**") that the Net Obligations are other than 2.16% of the applicable costs, expenses or other amounts (such other net percentage being referred to as the "**Determined Percentage**"), the parties agree to reconcile and make appropriate adjustments and payments, one to the other, in respect of such amounts as may have been paid by the City prior to the Determination Date. Furthermore, any calculations or reconciliations which may be undertaken pursuant to this Agreement after the Determination Date will be made and undertaken using such Determined Percentage as opposed to 2.16%. Notwithstanding the foregoing, the parties have been advised that it is possible that CRA might take an altogether different approach to any HST payable in connection with the various amounts payable under this Agreement, including, without limitation, determining that the Board should be collecting from the City thirteen percent (13%) of any amounts charged to and payable by the City under this Agreement in respect of HST thereon. Regardless of the circumstances, the parties agree to cooperate and work together to arrive at an approach which both satisfies CRA and respects the principles which underlie this Agreement. In this regard, the parties agree to act in good faith in connection with any calculations, reconciliations and payments relating to the Board's HST obligations in respect of the costs, expenses and other amounts related to the Project.



## **ARTICLE 3 - FINANCIAL RECORDS**

### **3.01 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; 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). The Board's obligations under this section 3.01 will end on the second (2<sup>nd</sup>) anniversary of the date of this Agreement.

## **ARTICLE 4 - FAMILY CENTRE ACTIVITIES**

### **4.01 Family Centre Activities**

Given the City's interest in seeing Family Centres operated in the City of London, the City agrees to:

- (a) provide the Board with suggestions regarding 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) identify and assist in 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.

## **ARTICLE 5 - OWNERSHIP**

### **5.01 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: (a) 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, (b) 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:

- (i) establish rules and issue directives in respect of access to and egress from the Premises;
- (ii) establish rules and issue directives in respect of parking arrangements for the Operator, its invitees and other users of the Premises;
- (iii) 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
- (iv) 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 6 - GENERAL**

### **6.01 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 6.01 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.

## 6.02 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.

## 6.03 Notices

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](mailto: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: Trevor Fowler, Manager, Children's Services  
E-mail: [Tfowler@london.ca](mailto:Tfowler@london.ca)

A Party may change its address particulars for purposes of this section 6.03, from time to time, by notice in writing. For purposes of this section 6.03:

- (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.

#### **6.04 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.

#### **6.05 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.

#### **6.06 Successors and Assigns**

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

#### **6.07 Laws of Ontario**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

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:

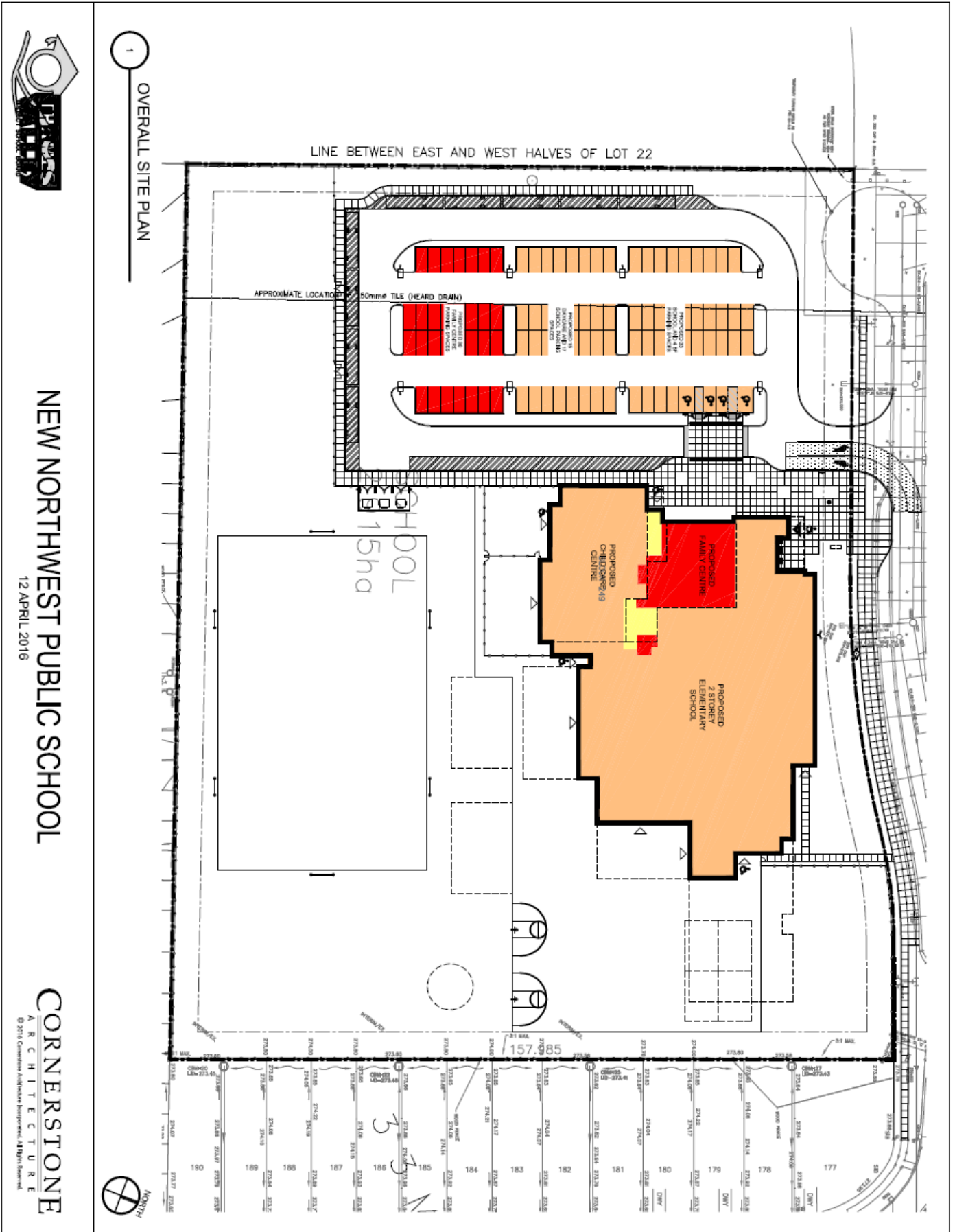
- **Parenting, Early Learning, Child and Family Programs**, such as parenting strategies, literacy and numeracy programs and play groups;
- **Health and Wellness Programs**, such as pre and post natal programs and early screening and assessment programs;
- **Early Childhood Education and Child Care** 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 3  
PARKING AREAS**



**NEW NORTHWEST PUBLIC SCHOOL**

12 APRIL 2016

**CORNERSTONE**  
ARCHITECTURE

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## **SCHEDULE 4**

### **PREMISES**

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

#### **Overall**

- Approximately 4,440 ft.<sup>2</sup>

#### **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.<sup>2</sup>
- 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.<sup>2</sup>
- Clinic Area – one small waiting room and two small examination rooms
- Playrooms/Meeting/Multipurpose Rooms - two rooms each approximately 600 to 750 ft.<sup>2</sup>
  - 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.<sup>2</sup>
- 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. 66,835 sq. ft. institutional building containing:**

- 533 pupil place elementary school (54,483 sq. ft.)
- Childcare Facility (7,912 sq. ft.)
- Family Centre (4,440 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.**



# NEW NORTHWEST PUBLIC SCHOOL

12 APRIL 2016

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1 OVERALL SITE PLAN

