

Consolidated Clause in Economic Development and Parks Committee Report 8, which was considered by City Council on November 30, December 1 and 2, 2004.

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**Result of Expression of Interest for a Child Care Operator
and a License Agreement of the Child Care Centre
Wellesley Community Centre
(Ward 28 Toronto Centre-Rosedale)**

City Council on November 30 and December 1 and 2, 2004, adopted this Clause without amendment.

The Economic Development and Parks Committee recommends that City Council adopt the staff recommendations in the Recommendations Section of the report (October 21, 2004) from the Commissioner of Community and Neighbourhood Services and the Commissioner of Economic Development, Culture and Tourism.

Purpose:

This reports outlines the result of the expression of interest process used to determine the child care operator for the Wellesley Child Care Centre, a new City built child care site located within the Wellesley Community Centre and seeks authority to negotiate and enter into a license agreement for the child care centre with the proposed operator.

Financial Implications and Impact Statement:

The City shall not receive any net revenue from this five-year license agreement, with the Tenant having the option to renew the license agreement for an additional term of five years on the same terms and conditions, save and except a further right of renewal. The City shall be responsible for Capital maintenance of the facility. However, the Tenant shall be responsible for all operating and realty tax costs. In addition, the Tenant will spend in excess of \$100,000.00 to furnish and equip the facility.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) a license agreement with The Child Development Institute be approved for a five-year term, with the Tenant having the option to renew the license agreement for an additional term of five years, at a nominal rent and in accordance with the terms and conditions set

out in the body of this report, as described in the proposed terms and conditions attached as Appendix A, and on such other terms and conditions as may be satisfactory to the Commissioner of Economic Development, Culture and Tourism and in a form acceptable to the City Solicitor;

- (2) the Commissioner of Economic Development, Culture and Tourism shall administer and manage the license agreement including the provision of any consents, approvals, notices and notices of termination provided that the Commissioner may, at any time, refer consideration of such matter (including their content) to City Council for its determination and direction;
- (3) the City Solicitor be authorized to complete the transaction on behalf of the City, including amending the commencement date of the license agreement to such earlier or later date as she considers reasonable; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its meeting of September 22, 23, 24 and 25, 2003 Council approved Report 7 of the Community Services Committee giving authority to the Department to select a child care operator(s) for City-built child care sites using an Expression of Interest Process and selection criteria outlined in the report.

In previous reports adopted by Council on April 23, 24, 25, 26, 27 and April 30, May 1 and 2, 2001; July 24, 25, and 26, 2001; November 26, 27 and 28, 2002 and June 24, 25, and 26, 2003, authority was given to construct a child care facility in the Wellesley Community Centre, and renovate City-owned facilities at 610 Jane Street and 118 Enderby Road as child care sites. The Wellesley Community Centre site is now completed and ready for occupancy.

Community and Neighbourhood Services staff requested Business Services (Economic Development Culture and Tourism) to draft terms and conditions to be attached to the Expression of Interest.

Comments:

All non-profit child care operators with service contracts for fee subsidy with the City of Toronto were invited to participate in an Expression of Interest for a child care operator for Wellesley Child Care Centre. Four applications were received and reviewed against the submission requirements by a review panel comprised of departmental staff. Four qualified operators were invited to an interview to present their proposed program. In addition to meeting the criteria outlined in the Expression of Interest process, proposed operators must meet the requirements of the City's Service Contract and Operating Criteria.

As a non-profit agency, the Tenant will be required to pay all costs associated with starting up a child-care centre, including equipment, appliances and furnishing. The rent shall be a nominal sum of two dollars (\$2.00) per annum net, plus any and all applicable taxes, for the entire term of the license agreement.

Staff of Business Services (Economic Development, Culture and Tourism) have been requested by the staff of the Children's Services Division to license the subject property to The Child Development Institute based on the proposed terms and conditions attached as Appendix "A".

Through the Expression of Interest process, the Children's Services Division has confirmed The Child Development Institute as the child care operator for Wellesley Child Care Centre

Conclusions:

This report outlines the results of the expression of interest process to determine the child care operator for the Wellesley Child Care Centre and confirms that the child care operator will be The Child Development Institute.

The Child Development Institute, a non-profit agency, was chosen through an expression of interest process as approved by Council to operate the city-owned child care facility included in the new City built Wellesley Community Centre located at 495 Sherbourne Street. In order to preserve the financial viability of this community program, a nominal rent license is critical. It is appropriate that the Tenant be provided with a five-year license agreement, with the Tenant having the option to renew the license agreement for an additional term of five years, in accordance with the terms and conditions set out in the body of the report and on the proposed terms and conditions attached as Appendix "A".

Contact Names:

Kathy McGuire, Program Manager, Contracted Services, Children's Services Division,
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Brenda Librecz, Acting General Manager, Parks and Recreation,
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List of Attachments:

Attachment: Appendix "A" – Proposed Terms and Conditions for the License Agreement

Appendix "A"

Proposed Terms and Conditions for the License Agreement between the Private Child-Care Operator and the City of Toronto for the Child-Care Centre at the City-owned property municipally known as Wellesley Community Recreation Centre, City of Toronto

1. Licensed Premises:

The licensed premises shall be the child-care centre forming part of the City-owned shared use facility at 495 Sherbourne Street, City of Toronto, to be municipally known and operated as the Wellesley Community Recreation Centre.

The Parks and Recreation Division will to operate the Wellesley Community Recreation Centre for social events, City programming and use of the premises for space, including but not limited to, staff office requirements.

2. Term:

The License Agreement shall be for a term of Five (5) years, as of the date of execution of the License Agreement.

3. Renewal:

Provided that the private child-care operator has given written notice to the Parks and Recreation Division (and the Children's Services Division) that they wish to renew the License Agreement, in writing, at least six (6) months prior to the expiration of the License Agreement and subject to the private child-care operator maintaining and meeting standards for an ongoing service contract with the Children's Services Division, and are not in any way in default under the terms and conditions of the License Agreement, the private child-care operator shall have the right to renew the License Agreement for an additional Five (5) years, on the same terms and conditions, save and except a further right of renewal.

4. Use:

4.1 The private child-care operator covenants to use Licensed Premises only for a non-profit child care centre licensed under the *Day Nurseries Act*, and family resource program, and for no other purpose, and to operate same continuously throughout the Term and any renewal thereof. The private child-care operator, at its sole expense, shall obtain necessary zoning, if required, for its intended use(s) and proof of same shall be submitted to the City.

4.2 The private child-care operator shall maintain its status as a non-profit organization and shall comply with the *Day Nurseries Act* (and any successor legislation) during the Term and any renewal thereof; and provide services in accordance with the City of Toronto Child Care Service Plan, and maintain its Service Contract with the City in good standing.

4.3 The private child-care operator shall not change its licensed capacity in its license issued under the *Day Nurseries Act* which shall at all times be subject to the approval of the Children's Services Division of the City.

4.4 The private child-care operator shall not change its business plan without approval from the Children's Services Division of the City.

4.5 The private child-care operator warrants its organization shall remain as a non-profit organization during the term if the License Agreement, and any renewal thereof.

5. Rent:

As the private child-care operator is a non-profit organization, the rent shall be deemed a Nominal Sum of two dollars (\$2.00) per annum, net, plus any and all applicable taxes, due and payable upon execution of the License Agreement and then thereafter on the anniversary date, of each year, for the entire Term of the License Agreement.

The private child-care operator agrees to pay any and all taxes, if any, which are levied, rated, charged or assessed against the Licensed Premises.

The private child-care operator further agrees that it will not derive any profit from the use of the Licensed Premises. Failing any of the aforementioned terms and conditions, the License Agreement may be terminated upon seven (7) days written notice and the City will have the right to take possession of any and all the improvements which may be erected in the Licensed Premises as liquidated damages without compensation to the private child-care operator.

6. Corporate Policy:

The private child-care operator must at all times, at its sole expense, comply with and adhere to any and all City of Toronto policies and procedures, By-laws and Laws as approved by City of Toronto Council, which may be amended from time to time, that includes any and all provisions with regards to Public Health and Safety issues and any other associated issues.

The private child-care operator shall comply, at its sole expense, with all Federal, Provincial and Municipal laws, by-laws, policies, rules and regulations (including, without limitation, CSA Standards) affecting the Licensed Premises and/or its operation and use by the private child-care operator and those authorized by or under the private child-care operator, including the obtaining of all necessary permits and licences, to submit proof or such compliance at the request of the Commissioner of Economic Development, Culture and Tourism, and to indemnify and save the City harmless from any liability or cost suffered by it as a result of the private child-care operator failure to comply, and shall further comply with the requirements of all governmental officials, authorities and agencies.

7. Net License:

It is intended that this License Agreement is a completely carefree net License to the City, that except as expressly herein set out, the City is not responsible during the Term for any costs, charges, and outlays of any nature whatsoever arising from or relating to the Licensed Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the private child-care operator shall pay all charges, impositions, cost and expenses of every nature and kind relating to the Licensed Premises except as expressly herein set out.

8. No employees of the private child-care operator shall be considered to be employees of the City of Toronto. The private child-care operator shall abide by all rules, regulations, and statutes for employees as set out in the appropriate Employment Acts, amended from time to time.

9. The parties agree generally that each will operate, maintain and manage their respective sites and components and exercise all of the rights and functions of ownership save and except as specifically otherwise agreed upon herein. The parties further agree to use, operate, maintain their respective components in a good state of repair and manage their respective components in such a manner so as to minimize to the greatest extent reasonably possible, any interference with use, operation, maintenance or management of any other component.
10. The private child-care operator shall accept the License Premises in an “as is” condition and the private child-care operator must satisfy itself, at its own expense, that the private child-care operator’s intended use complies with the existing *Day Nurseries Act*, Zoning By-law, Building Code, Ontario Fire Code and all other rules regulations. The private child-care operator is to be responsible, at its expense, for any improvements required, subject to Clause 11, 12 and 20 herein.
11. Private Child-Care Operator’s Improvement/Maintenance:
 - 11.1 The private child-care operator, as of the Commencement Date, shall, at its sole expense, repair, improve, or renovate the Licensed Premises to suit its intended use subject to the approval of the Commissioner(s) of Economic Development, Culture and Tourism and Community and Neighbourhood Services. The private child-care operator shall not perform any work of repair or renovation without first submitting detailed plans and specifications and construction methods/procedures to the Commissioner (s) of Economic Development, Culture and Tourism and Community and Neighbourhood Services for written approval. All work shall adhere to, the City’s policies and procedures and shall be performed by qualified and reputable contractors.
 - 11.2 Upon expiry, termination or any renewal of the License Agreement, all leasehold improvements and fixtures shall become the property of the City. At the sole discretion of the City, the private child-care operator shall, at its expense, remove such fixture(s), equipment, and debris as the City may require will all damages repaired all to the satisfaction of the Commissioner(s) of Economic Development, Culture and Tourism and Community and Neighbourhood Services
 - 11.3 Upon termination of the License Agreement, the private child-care operator agrees to waive any claim for compensation and/or reimbursement for any of the improvement or maintenance.
12. Existing Equipment:
 - 12.1 The private child-care operator will purchase all toys and furnishings required to meet the *Day Nurseries Act* requirements including playground structures.
 - 12.2 The private child-care operator shall satisfy itself, at its own expense, with respect to the adequacy of otherwise of the Existing Equipment, if any, for its purposes, and accept the Licensed Premises in the condition in which they are delivered to the private child-care operator on the Commencement Date. During the Term and any renewal or extension of the License, the private child-care operator shall, at its own expense, maintain, repair and replace all Existing Equipment, if any,

including but not limited to the appliances and furniture provided by the City's Children's Services Division as mentioned herein. The private child-care operator shall acquire, maintain and replace, as necessary, and at its own expense, any additional equipment and furniture required for its purposes.

12.3 The private child-care operator releases the City, its officers, employees, agents, representatives and elected and appointed officials (the "Released Parties") from every claim of every kind that the private child-care operator or any person or entity may make, suffer, sustain or incur with respect to the Existing Equipment (collectively, the "Existing Equipment Claims"), and agrees to indemnify the Released Parties in respect of every Existing Equipment Claim.

13. Fees and Other Charges:

The parties agree that costs will be apportioned as per designated space and time of use of space.

The parties will negotiate a formula and are solely responsible for their portion of any and all taxes and operating expenses related to the operation and maintenance of the facility and common areas, including but not limited to: water rates, hot water heater rental charges, heating and air conditioning costs, hydro, utilities, janitorial and cleaning services, landscaping, ice and snow removal on the walkways and parking lot and window cleaning.

All costs associated with garbage disposal shall be split evenly between both parties.

The private child-care operator shall be allotted one parking space in the parking lot and the private child-care operator shall be responsible for its appropriate portion of all costs, including but not limited to, repairs, maintenance and ice and snow removal, associated with the parking lot.

The private child-care operator shall arrange for separate janitorial and cleaning services, for the Licensed Premises and the private child-care operator shall be responsible for all costs associated with the separate janitorial and cleaning services.

All parties agree a review of the License Agreement shall occur thirty-six (36) months after the final occupancy of the facility.

14. Security:

The facility may have CARD ACCESS only to members of staff. In person security if required from time to time is to be a shared cost. Should one of the parties experience major problems that constantly require in person security assistance the group must try and mitigate its damages and the party shall be responsible for its own costs associated with the in person security.

15. Reserve Fund:

The private child-care operator may be required contribute to a Reserve Fund for capital improvements on an annual basis.

16. Management Committee:

The parties shall establish a management committee (the “Management Committee”) which shall make all decisions, give all approvals, and establish rules in connection with the operation, maintenance and repair of the shared use facility. The Management Committee shall consist of representatives of the Parks and Recreation Division, representatives of the Toronto Public Library Board and ex-officio representatives of the private child-care operator. Representatives of the private child-care operator shall not have voting rights. Most decisions made by the management Committee shall require approval of all voting members, but certain classes of decisions shall require unanimity.

17. Assign and Sublet:

The private child-care operator acknowledges and agrees that this License Agreement and the rights hereunder cannot be assigned by the private child-care operator hereto without the express consent in writing of the City, which consent may be unreasonably or arbitrarily withheld.

The private child-care operator does not have the right to enter into third party agreements for the provision of the food concessions subject to the Parks and Recreation Division having the first right of approval, save and except the catering contract that the private child-care operator must enter into to satisfy its obligations under the *Day Nurseries Act*. The private child-care operator agrees to adhere to all policies within the City as it relates to hot and cold vending rights, pouring rights and suppliers of snacks and vending machines.

The private child-care operator does not have the right to enter into permits for the rental of the Licensed Premises and use of the Licensed Premises by its members is subject to all policies and procedures as governed by the City of Toronto’s guidelines, as amended from time to time.

18. Access:

The City shall have complete access to the Licensed Premises at all times, given reasonable notice to the private child-care operator and the City must have a full set of keys to be provided at the expense of the private child-care operator.

The private child-care operator shall have permitted access to various rooms in the facility as required.

19. Hazardous Substances:

The private child-care operator represents and warrants that during its occupation of the Licensed Premises no Hazardous Substances or environmentally sensitive materials, as defined by the *Environmental Protection Act* or any other applicable Act, as amended

from time to time, shall be stored, placed, left or used on the Licensed Premises at any time for any reason whatsoever.

20. Advertising:

The private child-care operator must comply with any and all Advertising policies and procedures as approved by the City of Toronto, failing which this License Agreement is null and void and will be terminated by the City immediately.

The City reserves the right to require the removal of any advertisement which it deems to be inappropriate or offensive and private child-care operator shall remove any such advertisement within twenty-four (24) hours of receiving notice to remove. No compensation shall be payable by the City to the private child-care operator as the result of any such removal.

21. Nuisance:

Notwithstanding the private child-care operator's normal operation, the private child-care operator shall ensure that nothing is done or kept at or on the Licensed Premises which is or may be a nuisance, or which causes disturbance, damage to or interference with normal usage of any adjoining property and the private child-care operator shall not be permitted to release of ten (10) or more balloons within any 24-hour period.

22. Indemnification and Insurance:

The private child-care operator agrees that the City of Toronto, its servants, agents, successors or assigns, shall not be held liable for any loss or damage whatsoever which the City may incur resulting from or arising out of the City entering into this License Agreement. The private child-care operator further agrees that it will from time to time, and at all times hereafter, truly save harmless and fully indemnify the City, its servants, agents, successors and assigns from and against any and all actions, causes of actions, claims and demands which may be brought against or made upon the City, its servants, agents, successors or assigns and against all loss, liability, judgement costs or expenses which the City, its servants, agents, successors or assigns may sustain, incur or be put to resulting from arising out the City entering into the License Agreement.

Prior to the private child-care operator occupying, the Licensed Premises, the private child-care operator agrees to obtain and deposit with the City of Toronto a Certificate of Insurance indicating that the following insurance policy is in effect:

Commercial General Liability Insurance which has inclusive limits of not less than Five Million Dollars (\$5,000,000.00) for bodily injury and property damage resulting from any one occurrence and which is extended to include Personal Injury Liability, Broad Form Contractual Liability, Owner's and Contractor's Protective Coverage, Contingent Employers Liability, Non-Owned Automobile Liability and a Cross-Liability Clause.

The above policies will include the City of Toronto as additional insured and a clause that states that the policy will not be cancelled without the City of Toronto receiving thirty (30) days prior written notice.

23. The private child-care operator shall not install any equipment or carry on any operation in the licensed premises in such a way as to increase the insurance risk.
24. That if any lien arising out of any labour, services and materials supplied to the Licensed Premises at the request of the private child-care operator is registered against the Licensed Premises, the private child-care operator shall cause it to be paid, satisfied, cancelled or vacated within fifteen (15) days of having received notice thereof. If the private child-care operator defaults in its obligation, the City shall have the right to pay into the court sufficient monies to vacate the Lien, pending the private child-care operator's pursuit of its action to defend against the claim for Lien, which payment shall be for the private child-care operator's account as additional fee owing in arrears.

The private child-care operator shall send to the City any notice of a Construction Lien registered against the City.

25. Overholding:

- 25.1 If the private child-care operator remains in possession of the Licensed Premises after the expiry of the Term with the written consent of the City, the private child-care operator shall remain as an overholding tenant on a month-to-month basis, at the same Net Rent as that payable for the month immediately preceding the expiration of the License Agreement and subject otherwise to all the provisions of the License Agreement.
- 25.2 If the private child-care operator remains in possession of the Licensed Premises after the expiry of the Term without the City's consent, City may take immediate action without notice to the private child-care operator, to recover possession of Licensed Premises.
- 25.3 If the private child-care operator is obliged to vacate the Licensed Premises by a certain date and fails to do so at a time when the City is legally obliged to deliver possession thereof to a third party, the private child-care operator shall indemnify and save harmless the City fully, for all Damages suffered as a result of such failure.
- 25.4 The acceptance by the City of arrears of rent or compensation for use or occupation of the Demised Premises after notice of termination of the License Agreement has been given shall not operate as a waiver of the notice or as a reinstatement of the License Agreement or as a creation of a new License Agreement unless the parties so agree.

26. Termination:

Termination of the License Agreement by the City:

- (1) It is mutually agreed that if the private child-care operator shall default in any of the terms, conditions or covenants or provisions of the License Agreement, the City may forward notice in writing of such default to the private child-care

operator, and failure of the private child-care operator to cure such default to the satisfaction of the City of Toronto within thirty (30) days after the date of receipt of the notice shall, at the option of the City work as a forfeiture of the License Agreement and shall give the City the right, at its option to treat this License Agreement as cancelled and terminated, and the term and estate vested by the private child-care operator, as well as all other rights of the private child-care operator hereunder, shall immediately cease and expire as fully and with like effect as if the entire terms herein provided for had expired, and the City may enter the demised premises, with or without process of law, and take possession together with any and all improvements which may have been erected thereon, the private child-care operator waving any demand for possession thereof; and all improvements made upon the premises shall be forfeited and become the property of the City as liquidated damages without compensation therefor to the private child-care operator.

- (2) In addition to any other rights of the City to terminate this License Agreement at law or hereunder, the City shall have the right at all times to terminate this License Agreement:
 - (a) upon thirty (30) days written notice to the private child-care operator, upon the private child-care operator losing its status as a Non-profit Organization;
 - (b) upon thirty (30) days written notice to the private child-care operator following the expiry or termination for any reason of the Children's Services Service Contract; or
 - (c) upon thirty (30) days written notice to the private child-care operator following the termination of their license to operate a day care centre;
 - (d) upon three hundred and sixty-five (365) days, written notice to the private child-care operator, without cause.

Termination of the License Agreement by the Private Child-Care Operator:

- (1) If at any time during the Term, the private child-care operator desires to discontinue operating a children's non-profit day-care centre in the Licensed Premises, the private child-care operator may give Sixty (60) days' prior written notice to the City to terminate the License Agreement without prejudice to the City's right and remedies in the event of default. If such notice is so given, then following shall apply:
 - (a) The License Agreement shall terminate on the Termination Date, being sixty (60) days after the City's receipt of the notice. The private child-care operator shall deliver vacant possession of the Licensed Premises to the City by the Termination Date in accordance with all applicable provisions in the License Agreement and without payment or compensation of any kind from the City.

- (b) Commissioner of Community and Neighbourhood Services, in consultation with the Commissioner of Economic Development, Culture and Tourism, shall have the sole right to select the next operator in conformity with applicable City of Toronto procedures.
- 27. The private child-care operator shall not change its capacity as established in its license issued under the *Day Nurseries Act* which at all times be subject to the approval of the Children's Services Division of the City.
- 28. The Commissioner of Economic Development, Culture and Tourism shall administer and manage the License Agreement including the provision of any consents, approvals, notices and notices of termination provided that the Commissioner of Economic Development, Culture and Tourism may, at any time, refer consideration of such matter (including their content) to City Council for its determination and direction.
- 29. Documentation:
 - (a) The License Agreement shall be subject to such other terms and conditions as may be deemed reasonable and necessary by the City of Toronto Solicitors;
 - (b) All documentation shall be in the City's standard form and, notwithstanding any clause contained or not contained in this proposal, the License Agreement must be in a form and content acceptable to the City of Toronto Solicitor.
- 30. These terms and conditions are subject to the approval by the relevant City Authorities.

The Economic Development and Parks Committee also considered a communication (November 10, 2004) from the Community Services Committee, advising that the Community Services Committee on November 10, 2004, recommended to the Economic Development and Parks Committee that City Council adopt the staff recommendations in the Recommendations Section of the report (October 21, 2004) from the Commissioner of Community and Neighbourhood Services and the Commissioner of Economic Development, Culture and Tourism.