APPENDIX F

REVISED

AGREEMENT BETWEEN COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF LABOR AND INDUSTRY, AND LABOR AND INDUSTRY PARENTS' ASSOCIATION

THIS AGREEMENT made and entered into this 1st day of May, 1989, by and between the Commonwealth of Pennsylvania, Department of Labor and Industry, hereinafter called the "Department", and the Labor and Industry Parents' Association, hereinafter called the "Parents' Association".

WITNESSETH:

WHEREAS, the Department has identified a need for work-site child care at the Labor and Industry Building; and,

WHEREAS, the Parents' Association has been formed for the express purpose of providing adequate work-site child care at this installation through a contract with an independent contractor; and,

WHEREAS, the Parents' Association and the Department have agreed to work together in the effort to provide work-site child care at this location.

NOW THEREFORE, the parties hereto, agreeing to be legally bound, in consideration of the mutual promises hereof and the mutual benefits hereby conferred do hereby covenant and agree as follows:

A. General Provisions

1. The Parents' Association is a membership association incorporated as a Nonprofit Corporation under Pennsylvania law for the express purpose of providing affordable, convenient, safe and high quality work-site child care at the Labor and Industry Building.

2. Membership in the Parents' Association is open to employes (as that term is defined in the Commonwealth's Personnel Rules) of the Commonwealth. The Parents' Association agrees that it will not discriminate with regard to membership in the Association on the basis of race, color, religion, national origin, sex, age, ancestry, or handicap.

3. The Parents' Association agrees that the By-Laws of the Parents' Association shall be subject to review and approval by the Department head or his/her designee and the Advisor to the Governor on Child Care Policy or the Governor's designee.

4. The Parents' Association agrees that its financial records, minutes, and all other documents shall be open for review and inspection by the Advisor to the Governor on Child Care Policy or the Governor's designee and the Department head or his/her designee.

5. The Parents' Association agrees that the Request for Proposal (RFP) for work-site child care service by which the Parents' Association solicits proposals for such services at the Labor and Industry Building shall be on forms established by the Advisor to the Governor on Child Care Policy or the Governor's designee and shall be submitted to the Department head or his/her designee for review and approval prior to issuance of the solicitation.

6. The Parents' Association agrees that representatives of the Advisor to the Governor on Child Care Policy or the Governor's designee and the Department head or his/her designee will participate as full members of the RFP screening committee.

7. The RFP shall contain an indemnification and hold harmless requirement. The Parents' Association agrees that the selection of a contractor to provide work-site child care at the Labor and Industry Building will be subject to the review and approval by the Advisor to the Governor on Child Care Policy or the Governor's designee and the Department head or his/her designee.

8. For and in consideration of the foregoing Agreements, the Department agrees that it will license and permit the Parents' Association and its contractor to use the following described Commonwealth of Pennsylvania facility

at the Labor and Industry Building as a work-site child care center (hereinafter called the "licensed premises"): 1,432 square feet and the women's bathroom facilities on the first floor, East Wing of the Labor and Industry Building, 7th and Forster Streets, Harrisburg, Pennsylvania, 17120.

9. The Department agrees that the licensed premises will be provided to the Parents' Association and its contractor for use as a work-site child care center without charge or cost for license fees or for the following utilities and services: heating/ventilation/cooling, electricity, water, sewer, and janitorial (excluding operational cleaning supplies) telephone lines (excluding installation of telephones and telephone charges) inasmuch as the establishment and operation of a high quality, affordable work-site child care facility benefits the Commonwealth and its employees. The Department agrees to maintain and, if necessary, repair the licensed premises to meet all applicable health, fire, safety and sanitary regulations.

10. The parties may terminate this Cooperative Agreement upon mutual agreement. The Department reserves the right to terminate this Cooperative Agreement on 90 days written notice to the Parents' Association for nonperformance of the terms and conditions hereof, unsatisfactory

performance in the operation of the work-site child care center or other good and sufficient cause or for its convenien

11. The Department reserves the right to inspect the licensed premises at any time to observe the operation thereof and the use of the premises.

12. The Parents' Association agrees that neither it nor its contractor will make any modifications to the licensed premises without the express written consent of the Department head or his designee.

13. The Parents' Association and Department agree that the purpose of this Cooperative Agreement is to provide high-quality, affordable work-site child care at the Labor and Industry Building and that they will endeavor to amicably resolve any questions or disputes respecting any manner pertaining to this Cooperative Agreement or the performance thereof, with the exception of disputes committed to resolution by the PHRC under Section B.6 of the Agreement. If the parties are unable to resolve an question or dispute by mutual agreement, it shall be submitted to the Advisor to the Governor on Child Care Policy or the Governor's designee, who will issue a written decision on the matter under dispute, which decision shall be final and binding upon the parties hereto.

B. Nondiscrimination

1. The Parents' Association and any provider for day care services with whom it contracts shall not discriminate against any employe, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex.

2. The Parents' Association and any provider for day care services with whom it contracts shall take affirmative action to ensure that applicants are employed, and that employes or agents are treated, during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or terminations, rates of pay or other forms of compensation and selection for training.

3. The Parents' Association and any provider for day care services with whom it contracts shall post in conspicuous places available to employes, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency, setting forth the provisions of this nondiscrimination clause.

4. The Parents' Association and any provider for day care services with whom it contracts shall, in advertisements

or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

5. The Parents' Association shall send any labor union workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employes and applicants for employment. Similar notice shall be sent to every other source of recruitment regularly utilized by the Parents' Association.

6. It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49, or this nondiscrimination clause that the Parents' Association had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Parents' Association was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

7. Where the practices of a union or of any training programs or other source of recruitment will result in the exclusion of minority group persons, so that the Parents' Association will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause, the Parents' Association shall then employ and fill vacancies through other nondiscrimination employment procedures.

8. The Parents' Association and any provider for day care services with whom it contracts shall comply with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of the Parents' Association's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may, after hearing and adjudication, be terminated or suspended, in whole or in part, and the Parents' Association may be declared temporarily ineligible for further Commonwealth Agreements, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

9. The Parents' Association and any provider for day care services with whom it contracts shall furnish all relevant and necessary employment documents and records to the

contracting agency or the Human Relations Commission for the purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to Section 49.53 of the Regulations. If the Parents' Association does not possess documents or records reflecting the necessary information it shall, to the extent it is able to do so, furnish such information on reporting forms supplied by the contracting agency or the Commission.

10. The Parents' Association and any provider for day care services with whom it contracts shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employes.

11. The Parents' Association and any provider for day care services with whom it contracts shall include the provisions of this nondiscrimination clause in every subcontract so that such provisions will be binding upon each subcontractor.

12. The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission.

13. The Parents' Association's obligations or the obligations of any provider for day care services with whom

it contracts under this clause are limited to the Parents' Association's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

C. Contractor Integrity

1. The following definitions shall apply to this section:

a. Confidential Information - information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

b. Consent - written permission signed by a duly authorized officer or employe of the Commonwealth, provided that where the material facts have been disclosed in writing by pre-qualification, bid, proposal, or contract terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.

c. Parents' Association - the individual or entity that has entered into this Agreement with the Commonwealth, including directors, officers, partners, managers, key employes, and owners of more than 5 percent interest.

d. Financial Interest - ownership of more than a 5 percent interest in any business, or; holding a position as an officer, director, trustee, partner, employe, or the like or holding any position of management.

e. Gratuity - any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The Parents' Association shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The Parents' Association shall not disclose to others any confidential information gained by virtue of this Agreement.

4. The Parents' Association shall not, in connection with this or any other Agreement with the Commonwealth, directly or indirectly offer, confer, or agree to confer a pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employe of the Commonwealth.

5. The Parents' Association shall not, in connections with this or any other Agreement with the Commonwealth, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employe of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the Parents' Association nor anyone in privity with the Parents' Association shall accept or agree to accept from, or give or agree to give any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.

7. Except with the consent of the Commonwealth, the Parents' Association shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The Parents' Association, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The Parents' Association, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

10. The Parents' Association shall, upon request of the Office of State Inspector General, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of the Parents' Association of, concerning, and referring to this Agreement with the Commonwealth, or which are otherwise relevant to the enforcement of these provisions.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other Agreement with the Parents' Association, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Parents' Association from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one

shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulations, or otherwise.

D. Access to Books and Records

This Agreement is subject to audit by the Office of Administration, the Office of Budget, and/or the Auditor General. The Parents' Association will maintain all records pertaining specifically to this Agreement and, if so requested by the Commonwealth, the Parents' Association will make all such records available for inspection, audit, or reproduction by an authorized representative of the Office of Administration, the Office of Budget, and/or the Auditor General at a site designated by the Commonwealth. The Parents' Association agrees to maintain such records for a period of four years after the expiration of the Agreement.

E. Hold Harmless

The Parents' Association agrees to indemnify, defend, and save harmless the Commonwealth, its officers, agents, and employes from any and all claims and losses, damages, expenses, demands, suits and actions, etc., accruing or resulting directly or indirectly, to any person, firm or corporation in connection with the performance of this Agreement.

F. Utilization Data

The Parents' Association shall maintain and report to the Commonwealth such utilization data pertaining to the cost of this Agreement in such detail and with such frequency as shall be mutually agreed to. However, the Commonwealth will not require the Parents' Association to furnish data which is not available or is only available at a cost which is, in the judgment of the Commonwealth, disproportionate to the value of the data.

G. Protection of the Commonwealth and Its Employes

Neither the Commonwealth nor any employe is the agent or representative of the Parents' Association, and neither shall be liable for any acts or omissions of the Parents' Association, its agents or employes, or of any provider of child care.

H. Assignability

The Parents' Association shall not assign nor transfer any interest in the Agreement without prior written approval of the Secretary of Administration, which shall be subject to the original Agreement and subject to such conditions and provisions as the Secretary of Administration may deem necessary.

I. Covenant Against Contingent Fees

The Parents' Association warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an arrangement for a commission, percentage, or contingent fee (excepting bona fide employes or bona fide commercial or selling agencies maintained by the Parents' Association for the purpose of securing business). For breach or violation of this warranty, the Commonwealth shall have the right to void the Agreement without liability, or, in its discretion, to deduct from the Agreement prior of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

In witness, whereof, the parties hereto have executed this Cooperative Agreement:

Harris L. Gifford 5/1/54
Secretary Date
Department of Labor and Industry

[signature] 4/24/89
Chief Counsel Date
Department of Labor and Industry

[signature] 4/18/89
President Date
Labor and Industry Parents' Association

[signature] 4/18/89
Treasurer Date
Labor and Industry Parents' Association

Approved:

Office of Attorney General — Date

Comptroller, Labor and Industry — 6/9/89 — Date

Office of General Counsel — 5/23/89 — Date

RECEIVED
Contract Review
JUN 05 1989
Depts. of Aging, Health and Labor and Industry