

**HAMMOND BAY SCHOOL – MULTI-PURPOSE SPACE
FACILITY USE AGREEMENT**

THIS AGREEMENT made as of the 1st day of January 2025 (the “**Effective Date**”) is

BETWEEN:

**THE BOARD OF EDUCATION OF SCHOOL
DISTRICT NO. 68 (NANAIMO-LADYSMITH)**
395 Wakesiah Avenue, Nanaimo, BC, V9R 3K6

(the “**Board**”)

AND:

CITY OF NANAIMO
455 Wallace Street, Nanaimo, BC, V9R 5J6

(the “**City**”)

WHEREAS

A. The Board is the registered owner of the lands located in the City of Nanaimo, Province of British Columbia and legally described as:

Parcel Identifier Number 003-796-957
LOT A, DISTRICT LOT 41, WELLINGTON DISTRICT, PLAN 18839, HAMMOND BAY SCHOOL

(the “**Lands**”) as shown on Schedule A;

B. The City wishes to use, on a non-exclusive basis, the multi-purpose space and washrooms (the “**Licence Area**”, Schedule B) for community use purposes during those times that the Licence Area is not in use by the Board; and

C. In return for the Board providing the City with use of the Licence Area, the City will pay to the Board all revenues realized from third party users of the Licence Area, as well as rent for City use of the Licence Area, net of any maintenance, janitorial and/or utility costs charged by the Board to the City.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT the Board and the City (the “**Parties**”), in consideration of the covenants and agreements herein contained, covenant and agree with each other as follows:

1.0 PURPOSE

(a) The purpose of this Agreement is to provide a framework within which the Parties can cooperate to maximize the use of the Licence Area, and to provide for the efficient and effective management and administration of the Licence Area, without compromising the Parties' respective authority and mandate.

- (b) This Agreement does not grant any interest in the Board Lands to the City.

2.0 LICENCE AREA

2.1 Maintenance and Repairs

- (a) Any maintenance of the Licence Area is to be performed by the Board as detailed in this section 2.1, unless otherwise mutually agreed upon between the Parties.
- (b) The Board will notify the City of the scheduled times allocated for regular daily and weekly maintenance of the Licence Area. The Parties will cooperate in establishing mutually agreeable timing for scheduled maintenance. The Board reserves the right to change the scheduled times for maintenance. If the Board requires a change to the timing of the scheduled maintenance, it will provide notice to the City representative.
- (c) The Board shall be responsible for the repair, maintenance and upkeep of the Licence Area. The Board shall maintain, or cause to be maintained, the Licence Area in a lawful, sanitary, neat, tidy and safe condition and free from nuisance.
- (d) Indoor equipment maintenance and repair requirements, including but not limited to, chairs, mats and tables, will be determined by the Operating Committee (defined in 6.1) evaluating equipment inventory deemed to be commonly available to both Parties. Equipment that is owned by one party for its own use exclusively, and that is clearly marked as such by that party, shall only be used by the other party if written permission is first obtained from the owner.
- (e) In consideration for the Board's foreseeably additional/incremental required utility costs, as well as janitorial and maintenance costs of the Licence Area due to the City's use of the space, including additional wear and tear attributable by the City's use, the City will pay the board all revenues realized from third party users of the Licence Area, as well as rent for City use of the Licence Area, net of any maintenance, janitorial and/or utility costs charged by the Board to the City. This amount may be reviewed annually, and adjusted going forward, only after agreement by both Parties.
- (f) All parties and third parties will adhere to the City of Nanaimo Facility Use Guidelines and to relevant Nanaimo Ladysmith Public Schools ("**NLPS**") Facility Use Guidelines, Terms and Conditions ("**Facility Use Guidelines**"). Rental rates will be determined by the NLPS Fees and Charges structure. The Board will not in any circumstances be required to pay any fee or charge for any use of the Licence Area during School Times (defined in section 3.1(a)).

3.0 JOINT USE OF LICENCE AREA

3.1 School Access to the Licence Area

Throughout the Term, the Board shall have first right of access to use the Licence Area for the purposes of Board educational or recreational programs (“**School Use**”) as follows:

- (a) from 6:00 a.m. to 6:00 p.m. on days when school is in session during the regular school year (“**School Times**”), and as previously scheduled under section 6.3(c)(ii), subject to maintenance and security requirements;
- (b) exclusive use on Wednesday evenings, September through June, or other specified Ecole Hammond Bay designated evening for which school is to be in session;
- (c) the Board will provide the City with dates in which the Licence Area will be reserved exclusively for School Use (“**Blackout Dates**”), and those Blackout Dates will be provided each year as follows:
 - by June 30th, prior to the September to June school year and
 - by December 31st, for the following June to Labour Day school summer break;
- (d) the Board shall be entitled to book the Licence Area for School Use outside of School Times, without incurring charges/fees, if the booking is within five (5) business days of the date of the requested use, and subject to availability;
- (e) During the Term, the City will manage all bookings of the Licence Area (outside of School Times) as per the City of Nanaimo Facility Use Guidelines, and rental rates will be determined by the NLPS Fees and Charges structure.

3.2 City Access to the Licence Area

Throughout the Term (defined in section 8.1), and subject to section 3.1 above, the City shall have first right of access to use the Licence Area for public recreation purposes, including authorizing third-party associations/organizations (“**City Use**”) as follows:

- (a) from 6:00 p.m. to 10:00 p.m. on days when school is in session during the regular school year;
- (b) with no restricted times on days when school is not in session; and
- (c) the City will, at its discretion, permit use of the Licence Area to third parties, as a community service. Any inquiries regarding the Licence Area by third parties, will be forwarded to the City for consideration, with booking requirements and consent possibly subject to conditions or reasonably withheld by the City.

3.3 The City must ensure, and convey to authorized third-party users, that prior to vacating the Licence Area at the time under 3.2(a), and after any period of use of the Licence Area, that the space is left clean and litter-free.

3.4 Maintenance and Security Access Hours

The costs of any additional maintenance or security requirements for any planned activity by the City, outside of the times outlined in section 2.1(b), shall be agreed to in advance by the Operating Committee. Such maintenance and security requirements shall be consistent with the provisions

of Board and City bylaws and regulations, as well as the collective agreements entered into by the Board and the City from time to time with their respective unions.

3.5 Equipment

The purchase or replacement of jointly used program equipment by the Board and the City thereof shall be agreed to in advance by the Operating Committee and as per section 2.1(d) of this agreement.

3.6 Smoking and Tobacco Use/Alcohol

The City acknowledges that the *Tobacco Control Act* prohibits the use of tobacco, cannabis or other smoked/vaped substance (the “**Smoking Ban**”) and the Board prohibits the consumption of alcohol (the “**Drinking Ban**”) in all school district buildings and on all school district lands, and the City agrees that during the Term, while the City occupies the Licence Area, the City will comply with, and cause all its invitees to comply with, the Smoking Ban and the Drinking Ban, and will use its best efforts to enforce the Smoking Ban and the Drinking Ban in and about the Licence Area.

3.7 Taxes

The City will pay when due all Goods and Services Taxes payable in respect of its administration and use of the Licence Area.

4.0 **CITY USE OF OTHER SCHOOL FACILITIES**

4.1 Parking

- (a) The Board agrees that incidental use of the Board’s parking area located on the Lands, by users of the Licence Area, will be an acceptable use of the Lands outside of regular school hours.
- (b) The City, through a third-party contractor, will maintain parking lot access for evenings and weekends.

4.2 City Access to other School Facilities

The Board and the City will explore City use of other school facilities outside of regular School Use and School Times, including use of the special education / inclusion room, gymnasium and fields.

5.0 **ADMINISTRATIVE RESPONSIBILITY**

5.1 Authority

For the purposes of implementing and administering this Agreement, the administrative authority of the City shall be exercised by the Chief Administrative Officer, and the administrative authority of the Board shall be exercised by the Secretary Treasurer of the Board, or their respective

designates (the “**Designated Representatives**”). These two persons or their designates shall be responsible for determining operating parameters affecting the Licence Area and for the delegation of operating authority within those parameters to the Operating Committee, subject to section 5.2 following.

5.2 Operation Policies

The use and operation of the Licence Area shall be subject to the policies, regulations and conditions of the Board and City respectively, as they shall from time to time be determined. Without limiting the foregoing, each Party shall ensure that it and its invitees only use the Licence Area in compliance with all applicable laws, regulations and orders of government authorities and courts having jurisdiction, and in a manner that does not constitute a nuisance to any other owner or occupant of the Lands or any neighbouring lands.

5.3 No Conflict

The Parties will use their best efforts to ensure that the activities under this Joint Use Agreement are not in conflict with the terms of any applicable collective agreement. If more than one collective agreement applies and they contain conflicting provisions, then the Parties will work diligently and in good faith to achieve a resolution acceptable to both Parties, acting reasonably.

6.0 **OPERATING COMMITTEE**

6.1 Composition

The "**Operating Committee**" shall be comprised of the following members:

- (a) two staff representatives appointed by the Secretary Treasurer of the Board; and
- (b) two staff representatives appointed by the City’s Director of Recreation & Culture.

6.2 Operating Committee Mandate

The Operating Committee's mandate shall be to work in consultation with local residents, local associations/organizations, the City and the Board to provide an inclusive and coordinated community-based approach to the planning, programming and scheduling of the Licence Area in accordance with the terms of this Agreement. The Operating Committee shall consult, and cooperate to develop, maintain, amend and coordinate an overall annual schedule of approved uses for the Licence Area in order to assure maximum use of the Licence Area while meeting the needs of the Board, the City, local residents and the community at large and complying with the provisions of this Agreement. The Operating Committee shall have no authority to amend or terminate this Agreement.

6.3 Operating Committee Guidelines

The Operating Committee shall work within policy guidelines and operating authorities established from time to time by the Board and City, which shall include the following:

(a) Meetings/Reporting;

The Operating Committee shall meet as required, to be determined by mutual agreement. Minutes shall be taken of all matters discussed at each meeting and shall be considered accurate if signed by at least one representative of each of the Parties.

(b) Budget/Operating Costs;

- i. The Parties agree that annual costs relating to the operations, repair and maintenance of the Licence Area will be paid by the Board. These include identified demand and current service levels of security services, janitorial/custodian services, equipment purchase and repair costs, utilities, maintenance, and will be reviewed each Operating Year. Exceptions shall include willful damage arising from City Use, not in compliance with Facility Use Guidelines; the cost of such damage would be charged to and paid by the City, net of any insurance coverage.
- ii. The Operating Committee, when deemed necessary, will review and refer any electrical, structural, mechanical, ventilation and plumbing fixture maintenance needs to the Board, and the allocation of costs thereof for approval by the Board and City respectively.
- iii. By May 31st of each year of the Term, or such other date as the Parties may agree, the representative appointed by the City's Director of Recreation & Culture shall provide to the representative appointed by the Secretary Treasurer of the Board, an annual report pertaining to the joint use of the Licence Area with details of all bookings, revenue and expenditures, including information as the Board may reasonably request.
- iv. By June 30th of each year of the Term, or such other date as the Parties may agree, the representative appointed by the Secretary Treasurer of the Board shall meet with the representative appointed by the City's Director of Recreation & Culture to review the budget and to discuss any additional anticipated operation, maintenance and equipment costs pertaining to the future joint use of the Licence Area as set out in article 3.0. Both Parties agree that all net positive revenues that the Board receives from the City regarding the use of the Licence Area are to be applied to Licence Area maintenance and improvements, and thus no carry forward of surplus revenue is to occur from one year to the next.

(c) Scheduling/Time Availability

- i. The Operating Committee may provide input for the priority of use and access to the Licence Area in order to maintain a schedule that meets the needs of the Board and the City.
- ii. The Operating Committee may provide input on special event bookings of the Licence Area outside of School Times, as outlined in section 3.2 as follows:

- A. by the end of June for the following September through March; and
 - B. by the end of December for the following April through August.
- iii. Any changes to the agreed upon allocation, by either the Board or the City, requires a minimum of ten (10) business days' notice prior to the event date.

(d) Rental of Licence Area

Agreements for use of the Licence Area shall be regulated by the City of Nanaimo Facility Use Guidelines and follow the NLPS Fees and Charges per the Parties' mutually agreed upon form of rental agreement. All revenues for use of the Licence Area by third parties shall be payable to the Board.

(e) Insurance/Liability/Security

- i. The City agrees that any City Use of the Licence Area will be at the City's own risk and the City agrees to indemnify and save harmless the Board from and against all actions, costs, claims and demands of every kind, description or nature arising out of or in any way connected with such use, including claims arising pursuant to the Occupiers' Liability Act or the Builders Lien Act, except to the extent that any such actions, costs, claims and demands arise from the negligent or wrongful acts or omissions of the Board or anyone for whom the Board is in law responsible.
- ii. The Board agrees that any School Use of the Licence Area will be at the Board's own risk and the Board agrees to indemnify and save harmless the City from and against all actions, costs, claims and demands of every kind, description or nature arising out of or in any way connected with such use, except to the extent any such actions, costs, claims and demands arise from the negligent or wrongful acts or omissions of the City or anyone for whom the City is in law responsible.
- iii. The City and the Board, subject to limitations placed on the Board by the Ministry of Education and Child Care, further agree that each Party shall maintain liability insurance for the Licence Area, in the amount of two million dollars (\$2,000,000) per occurrence or such higher limit as the Parties may deem prudent from time to time.
- iv. Any agreements for use of the Licence Area by any third party shall require such third party to obtain comprehensive general liability insurance as specified in the rental agreement and such insurance shall name the City and the Board, each as "Additional Insured". Such agreement shall also specify that the third party shall indemnify the City, its elected officials, officers, employees and agents and the Board, its officers, employees and agents from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the rental or other use of the Licence Area included in the agreement.

- v. The security provisions established by the Board or by the City from time to time with respect to Licence Area shall be set out in the rental agreement and shall be strictly enforced and adhered to by all parties using the Licence Area.

(f) **Monitoring/Evaluating/Recommendations**

The Operating Committee shall monitor the implementation of this Agreement and the participation by staff of the City and Board in the implementation of the joint use of the Licence Area. The Committee shall recommend policy changes or operating authority guidelines to the Board and City for the better coordination of programs and the effective use of the Licence Area consistent with the mandate of the Operating Committee as defined in section 6.2 herein.

(g) **Resolution of Disputes**

The Operating Committee shall mediate problems and concerns related to the use of the Licence Area. If the Designated Representatives are unable to resolve the dispute, they shall refer the dispute as follows:

- i. first to Board's applicable Assistant Superintendent and the Board's Executive Director of Planning & Operations, and to the City's Director of Parks, Recreation and Culture and Deputy CAO, and if no resolution to the dispute is agreed upon within a reasonable period, then
- ii. the dispute shall then be referred to the Board's Secretary Treasure and to the City's CAO, and if no resolution to the dispute is agreed upon by the Board and the City within a reasonable period, then
- iii. the dispute shall be referred to arbitration pursuant to the Arbitration Act of British Columbia, for a final and binding decision on the Parties.

7.0 DISPOSITION OF INTEREST

7.1 Assignment

The City shall not assign its interest in this Agreement or any renewal thereof without the prior written consent of the Board, which consent may be subject to conditions or withheld.

8.0 TERM / RENEWAL

8.1 Term

This Agreement shall be for a term of ten (10) years, commencing January 1st, 2025 and ending December 31st, 2034, subject to earlier termination or renewal pursuant to this Agreement (the "Term").

8.2 Renewal

Prior to expiry of the initial Term, the Parties may enter into negotiations to renew this Agreement for a further ten (10) years on the same or amended terms and conditions. If no further written agreement is executed by both Parties prior to the expiry of the Term, then this Agreement will expire at the end of the initial Term.

9.0 **TERMINATION**

9.1 Damage or Destruction

If the Licence Area is substantially damaged or destroyed to the extent that the Licence Area or a substantial portion thereof is rendered unusable, or convenient access to the Licence Area cannot be had, all as determined by the Board acting reasonably, then the Board may, at its option, elect to not rebuild or repair the Licence Area and may terminate this Agreement and all responsibility for payment under section 2.1(e) will end effective the date of such damage or destruction, and such termination will operate so as to relieve the Parties of any liability arising from such damage or destruction. There will be no compensation to either party on account of such termination.

9.2 Termination on Default

Either Party may terminate this Agreement immediately on written notice if the other Party is in material default of its obligations under this Agreement and such default continues without being remedied for at least three (3) months after receipt of a written notice specifying the default and referencing this section 9.2.

9.3 Early Termination

Either Party may terminate this Agreement at any time without cause or liability by delivering to the other Party written notice of such intention to terminate at least six (6) months prior to the date of effective termination.

10.0 **MISCELLANEOUS**

10.1 Headings

The headings preceding the text of clauses and sections included in this Agreement and the headings to Schedules attached to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement.

10.2 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successor and permitted assigns.

10.3 No Interest in Land

The rights of the City pursuant to this Agreement are contractual only and this Agreement does not grant the City an interest in land. The Parties acknowledge and agree that the Licence Area and the other fixtures constituting the Licence Area constitute fixtures forming part of the Lands as they are constructed, and will be legally and beneficially owned by the Board, notwithstanding any other provision of this Agreement, and notwithstanding any payment of capital or operating costs by the City.

10.4 Force Majeure

The obligations of a Party under this Agreement shall be suspended during any period when that Party is prevented from fulfilling its obligations for reasons beyond its reasonable control including, without limitation, a strike, lockout, riot or other civil disorder, fire, flood, earthquake, or other natural disaster or act of God.

10.5 Relationship

The Parties expressly disclaim any intention to create a legal partnership, joint venture, trust or agency relationship, and nothing in this Agreement shall constitute either Party as the legal partner, joint venturer, trustee or agent of the other Party. No Party shall have, or represent that it has, the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of, or in the name of, any other Party or shall be, or represent that it is, the agent or legal representative of any other Party.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement by their duly authorized signing officers on the Effective Date.

CITY OF NANAIMO

by its authorized signatories:

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 68 (NANAIMO-LADYSMITH)

By its authorized signatories:

Name:
Title:

Name:
Title:

Name:
Title:

Name:
Title: