



**SOUTH WELLINGTON FORMER SCHOOL SITE LONG-TERM LEASE ALTERNATIVE APPROVAL  
PROCESS RESULTS**

**RECOMMENDATION**

1. That the Board deem the conditions precedent within the Lease with the Board of Education of School District No. 68 (Nanaimo-Ladysmith) for the use of the former South Wellington School facility and site satisfied.
2. That the Lease with the Board of Education of School District No. 68 (Nanaimo-Ladysmith) for the use of the former South Wellington School facility and site commence as per the terms of the Lease.

**BACKGROUND**

In June 2021 the Board approved in principle a Lease (Attachment 1) with the Board of Education for School District No. 68 (Nanaimo-Ladysmith) for the South Wellington School facility and site located in Electoral Area A. The Agreement includes several conditions precedent. Including one under Section 6. CONDITIONS PRECEDENT that the Regional District obtain the approval of the electors (6.1 (b)). As per the Agreement, all the conditions precedent must be completed prior to December 31, 2022. On October 26, 2021, in accordance with the *Local Government Act* and *Community Charter* the Board approved an Alternative Approval Process (AAP) to establish elector approval within Electoral Area A regarding the lease.

#21-552:

*“The Board approve the Elector Response Form as provided in Attachment 1\*; establish 4:00 P.M. on February 14, 2022, as the deadline for receiving elector responses for the alternative approval process and determine the total number of electors of the area to which the approval process applies to be 5,187.”*

\* Attachment 1 was the Alternative Approval Process Form, not Attachment 1 of this report.

The lease would enable the Regional District of Nanaimo (RDN) to use the South Wellington School site for community uses including a community centre and a community park.

Electors opposed to the long-term lease were required to sign an Elector Response Form and submit it to the Regional District of Nanaimo (RDN) prior to the deadline. Approval of electors by way of AAP is obtained if the number of elector responses received is less than 10% of the eligible electors. The number of eligible electors in Electoral Area A was determined to be 5,187, 10% of which is 518. As of the deadline a total of zero (0) valid Elector Response Forms were received (see Corporate Officer’s Certification - Attachment 2). Therefore, approval for the RDN to proceed with the 25-year lease with the Board of Education for School District No. 68 (Nanaimo-Ladysmith) for the former South Wellington School and site has received approval of the electors.

To provide for public information and facilitate engagement, the RDN created a 'Get Involved' page in the fall of 2021 regarding the South Wellington project. The page contains FAQs, a Question-and-Answer section, a document library populated with project related reports, links to partner webpages and a review of the Alternative Approval Process (AAP) including copies of the Electoral Response Forms.

The 'Get Involved' page for the South Wellington Project has been visited 54 times with 53 site visitors classified as 'Aware (41), Informed (11) or Engaged (1) based on their level of interaction with the site. The RDN also posted details about the AAP to Facebook, provided detailed notices in local print media and shared the link to the Get Involved page with community groups including the South Wellington Neighbourhood Association and the Cedar School and Community Enhancement Society.

## **FINANCIAL IMPLICATIONS**

In lieu of lease payments, the RDN will conduct capital improvements at an estimated cost of \$1.2 million. These capital expenditures have been allocated to the Electoral Area A Parks Reserves and Recreation and Culture Reserves and Community Works funding within the 2022 budget.

The Community Centre is projected to open in late 2023 at which time operating costs will be allocated within Electoral Area A Recreation and Culture budget. These costs are included within the 2022-2026 Financial Plan. The Electoral Area A Community Parks will fund operational costs for park elements.

## **STRATEGIC PLAN ALIGNMENT**

People and Partnerships - Seek opportunities to partner with the provincial and federal governments, other government agencies, and community stakeholder groups in order to advance strategic plan goals and objectives.

Social Wellbeing - Make the Region a safe and vibrant place for all, with a focus on children and families in programs and planning.

## **REVIEWED BY:**

D. Banman, Manager, Recreation Services  
T. Moore, Director of Finance  
J. Hill, Manager, Legislative Services  
T. Osborne, General Manager, Recreation and Parks  
D. Holmes, Chief Administrative Officer

## **ATTACHMENTS**

1. Lease of South Wellington School Facility and Site
2. Corporate Officer's Certification

**LEASE**

THIS AGREEMENT dated for reference the 1<sup>st</sup> day of June, 2021.

BETWEEN:

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

395 Wakesiah Avenue  
Nanaimo, British Columbia V9R 3K6

(hereinafter called the "**Board of Education**")

OF THE FIRST PART

AND:

**REGIONAL DISTRICT OF NANAIMO**

6300 Hammond Bay Road  
Nanaimo, British Columbia V9T 6N2

(hereinafter called the "**Regional District**")

OF THE SECOND PART

**WHEREAS:**

- A. The Board of Education is the owner of the lands and premises in the Regional District of Nanaimo, with a civic address of 1536 Morden Road and legally described as:

Parcel Identifier: 006-308-376  
Legal Description: LOT 4, SECTION 11, RANGE 7,  
CRANBERRY DISTRICT, PLAN 3153

(the "**Lands**").

- B. The Board of Education has determined that it no longer requires the Facility and the Lands for educational purposes for the foreseeable future.
- C. The parties agree that the Facility and the Lands should be made available for community use, including that the Regional District will:
- (a) invest in the Improvements so that the Facility can be operated during Term of this Lease as a community centre; and

- (b) operate a sports field, sports court and playground on the Lands as a Regional District of Nanaimo Electoral Area A Community Park.
- D. At the end of the Term, the improved Premises will be returned to the Board of Education.
- E. The Board of Education may only dispose of the Lands as contemplated by this Lease in accordance with the requirements of Ministerial Orders M193/08 and M194/08, adopted under the authority of sections 96(3) and 168(2)(t) of the *School Act*, which requires both public consultation and Ministerial approval.
- F. The Regional District has requested and the Board of Education has agreed to grant a Lease of the Lands more particularly described herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the prepaid rent of Ten Dollars (\$10.00) and other agreements to be paid and performed by the Regional District, the parties hereto covenant and agree with each other as follows:

## 1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Lease, words and phrases shall be defined as follows:

- (a) “**Additional Rent**” means all sums of money to be paid by the Regional District under this Lease, whether to the Board of Education or otherwise, except Rent;
- (b) “**Commencement Date**” has the meaning defined in section 3.1 of this Lease;
- (c) “**Condition Date**” has the meaning defined in section 6.1 of this Lease;
- (d) “**Conditions Precedent**” mean the conditions precedent described in section 6.1 of this Lease;
- (e) “**Facility**” means the existing building on the Lands previously operated by the Board of Education as the South Wellington Elementary School;
- (f) “**Improvements**” has the meaning defined in section 7.1(d) of this Lease;
- (g) “**Lands**” has the meaning described in paragraph A of the preamble to this Lease;
- (h) “**Permitted Uses**” means all activities described in paragraph C of the preamble to this Lease, including, without limitation, the improvement, alteration, construction, operation and management of the Premises for a

community centre and Regional District of Nanaimo Electoral Area A Community Park, along with all incidental activities that may be associated with such uses, such as activities associated with community programming, sports and recreation, playgrounds, performing arts, public and community meeting spaces, health and wellness services, maintenance and repair of the Facility and Lands, and any other activities that may be offered at similar community centres or community parks with comparable facilities;

- (i) “**Premises**” has the meaning defined in section 2.1 of this Lease;
- (j) “**Rent**” has the meaning defined in section 5.1 of this Lease; and
- (k) “**Term**” means the period of time defined in section 3.1 of this Lease.

1.2. **Schedules** – The following schedules are attached to and form part of this Lease:

Schedule A – Aerial Map Showing the Premises

Schedule B – Description of the Improvements

## 2. DEMISE

- 2.1. Subject to the terms of this Lease, the Board of Education does hereby demise and lease to the Regional District, and the District leases from the Board of Education, the Lands and Facility, which are shown outlined in bold black line and labelled “Subject Property” on the aerial map attached to this Lease as Schedule "A" (the "**Premises**").
- 2.2. The parties agree that the Premises are leased to the Regional District under this Lease on an “as-is, where-is” basis. The Tenant hereby accepts the condition of the Facility, including the condition of piping, electrical systems and presences of asbestos without any representations by the Board of Education as to the condition of the Facility or suitability of the Facility for the Permitted Uses.
- 2.3. The parties agree that the Regional District may alter the Facility or construct additional buildings and improvements on the Lands to accommodate and enhance its Permitted Use of the Premises, provided such alterations or construction is done in accordance with the terms of this Lease.

## 3. TERM

- 3.1. The term of this Lease shall be for twenty-five (25) years (the "**Term**"), commencing on a date that is sixty (60) days from the satisfaction or waiver

of the last of the Conditions Precedent (the “**Commencement Date**”) and terminating at 11:59 pm on the day before the twenty-fifth anniversary of the Commencement Date or such earlier or later date as may be determined in accordance with the terms of this Lease.

**4. USE**

- 4.1. The Regional District shall use the Premises for the Permitted Uses. The Regional District may not use the Premises for any other purpose without first obtaining the written consent of the Board of Education.

**5. RENT**

- 5.1. The Regional District covenants and agrees to pay prepaid rent in the amount of Ten Dollars (\$10.00) for the term (“**Rent**”) to the Board of Education upon execution of this Lease, without any set-off, compensation, or deduction whatsoever, in addition to all Additional Rent and other amounts payable under this Lease.
- 5.2. The Regional District shall pay any amounts owed for Additional Rent as instructed by the Board of Education and in any event no later than thirty (30) days after receiving an invoice from the Board of Education setting out the amount of Additional Rent.
- 5.3. If the Board of Education incurs any damage, loss or expense or makes any payment for which the Regional District is liable under this Lease, then the Board of Education may add the cost or amount of the damage, loss, expense or payment to the Rent and may recover it as if it were Rent or Additional Rent in arrears.

**6. CONDITIONS PRECEDENT**

- 6.1. Commencement of the Lease and the associated rights and obligations of the parties under this agreement is subject to the satisfaction of the following conditions precedent:
- (a) each party providing to the other evidence that this Lease has been approved and authorized by respective boards of the Regional District and Board of Education Board in accordance with all legal requirements;
  - (b) the Regional District obtains the approval of the electors required by Part 4, Division 2 of the *Community Charter* and Part 8, Division 3 of the *Local Government Act*;
  - (c) the completion of the public consultation required of the Board of Education in advance of the disposition of the Lands; and

- (d) approval of the disposition by the Minister of Education.
- 6.2. The parties agree that the conditions precedent created by this section are for the benefit of both of them and cannot be waived unless both parties agree to waive them in writing. The parties further agree that, without fettering their discretion, they shall use diligent and reasonable efforts to satisfy any conditions within its power to satisfy.
- 6.3. Each of the Conditions Precedent must be satisfied or waived in writing on or before December 31, 2022 (the “**Condition Date**”), or such other date or dates as may be subsequently agreed to in writing by parties, failing which this Lease will be null and void and of no force or effect.

## 7. COVENANTS OF THE REGIONAL DISTRICT

- 7.1. The Regional District covenants and agrees with the Board of Education to, where applicable, at its sole cost and expense:
  - (a) pay Rent and Additional Rent;
  - (b) pay when due all taxes, rates, duties and assessments whatsoever, whether federal, municipal, provincial or otherwise, charged upon the Lands as a result of the Regional District's occupation of or use of the Premises;
  - (c) pay as they become due all water, sewer, garbage and other rates in respect of the Premises and charges for all utilities including but not limited to gas, heating, telecommunications and power used on the Premises.
  - (d) make the renovations to the Facility and construct the buildings, structures and improvements on the Premises described in the attached Schedule “B” (the “**Improvements**”) and not to construct any other building, structure, or improvement on the Premises nor alter the Improvements or the Facility unless, prior to any construction, it has obtained:
    - (i) the written consent of the Board of Education; and
    - (ii) a building permit from the Regional District authorizing the construction of the Improvements set out in the permit and the plans and specifications attached to it;
  - (e) only use the Premises for Permitted Uses;

- (f) repair and maintain the Premises and all Improvements at all times to a standard consistent with the general standards of buildings of similar age and character, reasonable wear and tear excepted;
- (g) provide receptacles for refuse and rubbish of all kinds, and remove such refuse and rubbish from the Premises at regular intervals and not keep or leave any boxes, packing material or rubbish of any kind in or near the Premises or any passages connected with the same;
- (h) not commit or permit any waste or injury to the Premises, including the Improvements and the trade fixtures therein, or commit or permit any conduct which impedes or, in the opinion of the Board of Education acting reasonably, could constitute a nuisance to the Board of Education, occupiers of any other premises adjoining or in the vicinity of the Premises or to the public generally;
- (i) not perform or permit to be performed any activities on the Premises which:
  - (i) increase the hazard of fire or liability of any kind, over and above that of activities which are usually carried out at a community hall; or
  - (i) which invalidate any policy of insurance for the Premises held by either the Board of Education or the Regional District;
- (j) keep clean and free from any debris, rubbish, ice, snow, and leaves, all walks, passages, yards and alleys on or adjacent to the Premises;
- (k) cut the grass and maintain the landscaping on the Premises;
- (l) keep and leave whole and in good repair all water, gas, and electrical fixtures, glass, pipes, faucets, locks, fastenings, hinges, heating and cooling apparatus, in, on, or attached to the Premises;
- (m) comply with all applicable local government, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises, the condition of the Improvements, trade fixtures, furniture, and equipment installed therein, including the applicable zoning and business licensing bylaws;
- (n) comply with any notices or requirement of an association of fire insurance underwriters or agents, and comply with all notices issued by them that are served upon the Regional District or the Board of Education and
- (o) at the expiration of the Term, leave the Premises in good repair, reasonable wear and tear excepted.

## **8. BOARD OF EDUCATION'S COVENANTS**

- 8.1. The Board of Education covenants and agrees that provided the Regional District pays the Rent and performs its other covenants under this Lease, the Regional District shall and may peaceably possess and enjoy the Premises for the Term, without any interruption or disturbance from the Board of Education.

## **9. SUBLETTING AND ASSIGNMENT**

- 9.1. The Regional District may sublet or license any portion of the Premises to any subtenant without the prior consent of the Board of Education, provided that:
- (a) The subtenant or licensee will use the Premises in a manner that is consistent with the Regional District's obligations under this Lease;
  - (b) The use of the Premises by the subtenant or licensee will not result in the Regional District being in breach of this Lease; and
  - (c) Upon request from the Board of Education, the Regional District delivers such information as the Board of Education may reasonably require respecting the subtenant or licensee, including the name, address and nature of the activities of the subtenant or licensee.
- 9.2. In no event shall the sublease or license of the Premises release or relieve the Regional District from its obligations to fully perform all the terms, covenants and conditions of this Lease, unless such release has been expressly sought by the Regional District and granted by the Board of Education.
- 9.3. Without restricting the general permission granted in section 9.1, the Board of Education expressly permits the Regional District to enter into an agreement with a society, incorporated under the laws of British Columbia, for the operation of the Premises in accordance with the terms of this Lease. The terms of this agreement may assign any or all of the Regional District's obligations under this Lease to the society. This express permission is deemed to be consent given by the Board of Education pursuant to section 9.2 of this Lease.

**10. BOARD OF EDUCATION'S RIGHT TO PERFORM THE REGIONAL DISTRICT'S COVENANTS**

- 10.1. The Board of Education may enter and view the state of the Premises or the Regional District's operations on the Premises, without having any obligation to do so.
- 10.2. If the Regional District fails, refuses or neglects to perform an obligation under this Lease, then the Board of Education may, in addition to and without prejudice to any other remedy available to it, enter upon the Premises with any workers and equipment and do everything the Board of Education considers necessary to remedy the Regional District's failure. The Board of Education may remedy the Regional District's failure(s):
  - (a) if such failure continues after the Board of Education gives written notice of the default to the Regional District in accordance with section 18.1; or
  - (b) immediately, in the event of an emergency (as determined in the sole discretion of the Board of Education).
- 10.3. The Regional District will immediately pay the Board of Education as Additional Rent all costs, charges and expenses incurred by the Board of Education as a result of any steps it undertakes pursuant to section 10.2.

**11. INSURANCE**

- 11.1. The parties agree as follows:
  - (a) The Regional District will be responsible for insuring the Premises during the Term with such policies of insurance, terms of insurance and coverage limits that are consistent with the insurance that it places on its own buildings and lands with similar uses.
  - (b) The Board of Education will not be entitled to any insurance proceeds that are received by the Regional District pursuant to any policy of insurance that it has placed on the Premises during the Term.

**12. RELEASE AND INDEMNITY**

- 12.1. The Regional District hereby releases the Board of Education and its trustees, officials, employees and agents from any and all claims, actions, suits and demands relating to death, bodily injury, property damage or property loss suffered or incurred by the Regional District or anyone claiming under it, including by reason of the condition of the Facility or Lands.

- 12.2. The Regional District shall indemnify the Board of Education, its trustees, officials, employees and agents from any and all claims including those under occupiers' liability legislation, actions, suits, damages, costs, demands, expenses and losses arising out of or in any way related to this Lease or the activities of the Regional District or its employees, agents, contractors, invitees and permittees.
- 12.3. The obligations of the parties under this section will survive the expiry or earlier termination of this Lease.
- 12.4. Notwithstanding the indemnity provided by the Regional District in section 12.2, the Board of Education must coordinate with the Regional District where the Board of Education intends to direct workers, as that term is defined in the *Workers Compensation Act*, RSBC 1996, c 492 (the "*Workers Compensation Act*"), on the Premises. Prior to directing workers at the Premises during the Term, the Board of Education must ensure that proper arrangements with respect to a multiple-employer workplace, as that term is defined in the *Workers Compensation Act* have been made with the Regional District. If the Board of Education has not obtained in writing in advance the Regional District's consent to act as the prime contractor, the Regional District shall not be liable to indemnify the Board of Education for any claims or prosecutions covered by the *Workers Compensation Act*.

### **13. BUILDERS' LIENS**

- 13.1. The Regional District must promptly either pay or provide security and cause the discharge of any and all liens arising out of any construction or services done or permitted to be done by the Regional District to the Premises.
- 13.2. The Regional District will allow the Board of Education to post and will keep posted on the Premises any notice that the Board of Education may desire to post under the provisions of the *Builders Lien Act*, and all successor legislation, as amended from time to time.

### **14. OWNERSHIP OF IMPROVEMENTS**

- 14.1. The Board of Education and the Regional District agree that the title to and ownership of the Improvements will at all times during the Term be vested in the Regional District, notwithstanding any rule or law as to the immediate vesting of the title to and ownership of the Improvements in the Board of Education as owner of the freehold estate in the Lands. The title to and ownership of, the Improvements will not pass to or become vested in the Board of Education until the expiration of the Term, either by forfeiture, default, or lapse of time under the terms of this Lease, in which event the Improvements will become the absolute property of the Board of Education free of all encumbrances.

**15. REGIONAL DISTRICT'S OBLIGATIONS AT THE END OF THE TERM**

- 15.1. At the expiration or sooner termination of this Lease, the Regional District must, at its sole cost and expense, peaceably surrender and give up possession of the Premises without notice from the Board of Education, and any right to notice to quit or vacate being hereby expressly waived by the Regional District despite any law or custom to the contrary.
- 15.2. The Regional District must concurrently with the surrender of possession:
- (a) remove from the Premises all furniture, furnishings, equipment and trade fixtures;
  - (b) remove all goods, supplies, articles, equipment, chattels, vehicles and other things brought onto and kept within the Premises by or on behalf of the Regional District;
  - (c) remedy any unsafe conditions of the Premises created or aggravated by the Regional District's occupation of the Premises;
  - (d) repair any damage and injury occasioned to the Premises by reason of the Regional District's removal of any items; and
  - (e) deliver up the Premises and Improvements in a neat, clean and sanitary condition.
- 15.3. If the Regional District remains in possession of the Premises after the end of the term and without the execution and delivery of a new lease or written renewal or extension of this Lease, there is no tacit or other renewal of this Lease, and the Regional District will be considered to be occupying the Premises as a tenant-at-will. For the duration of the tenancy-at-will, the Regional District is responsible for performing all its obligations set out in this Lease, including the payment of Rent and Additional Rent. The Board of Education may deliver notice that it is terminating the tenancy-at-will on seven (7) days' written notice.

**16. RIGHT OF FIRST REFUSAL IN THE EVENT OF SALE OF THE PREMISES**

- 16.1. It is agreed that this Section 16 of this Lease is effective only upon approval of its inclusion being provided by the Ministry of Education; until that approval is provided, if ever, this Section 16 is without force and effect.
- 16.2. Provided the Regional District has performed all of its obligations under this Lease and is not otherwise in default under this Lease and provided the Board of Education, having elected to offer the Lands for sale, has received

a bona fide arms length offer that it is prepared to accept (the "Acceptable Offer"), the Board of Education will first provide the Regional District with a right of first refusal to purchase the Lands on the terms and conditions described in the Acceptable Offer (the "**Right of First Refusal**").

- 16.3. The Regional District will have thirty-five 35 business days to notify the Board of Education of its determination to purchase the Lands on the terms and conditions described in the Acceptable Offer, failing which the Right of First Refusal will lapse and be of no further force and effect and the Board of Education is free to complete the sale of the Lands to the party that made the Acceptable Offer on the terms and conditions of that offer
- 16.4. The parties will each deliver or cause to be delivered to the other all such further documents and assurances as may be reasonably required to give full effect to this Right of First Refusal.
- 16.5. Despite any other provision in this Lease, this Right of First Refusal will terminate and be of no further force or effect if this Lease is terminated, surrendered or otherwise ended for any reason.
- 16.6. This Right of First Refusal is not assignable by the Regional District.

## 17. TERMINATION AND RE-ENTRY

- 17.1. The following are "**Events of Default**" by the Regional district:
  - (a) the Regional District fails to observe or perform any of its other obligations under this Lease and the Regional District has not, within thirty (30) days after notice from the Board of Education specifying the default, cured the default, or, if the cure reasonably requires a longer period, the Regional district has not commenced to cure the default within the seven-day period and thereafter does not diligently pursue the cure of such default;
  - (b) without the consent of the Board of Education, the Premises is vacant for sixty (60) days or more;
  - (c) without the consent of the Board of Education, the Regional District fails or ceases to use the Premises for the Permitted Uses.
- 17.2. In the Event of Default by the Regional District, then the Board of Education, in addition to any other right or remedy, may do any or all of the following:
  - (a) re-enter and remove all persons and property from the Premises; and
  - (b) terminate this Lease and all of the Regional District's rights under it.

17.3. The parties may terminate this agreement by mutual consent.

17.4. At the termination of this Lease, for any reason, the Board of Education shall retain the Improvements, buildings or structures that remain on the Premises and they shall become the sole and exclusive property of the Board of Education without compensation to the Regional District.

**18. EFFECT OF WAIVER**

18.1. The Board of Education, by waiving or neglecting to enforce the right to forfeiture of this Lease or the right of reentry upon breach of any covenants, conditions or agreements in it, does not waive its rights upon any subsequent breach of same or any other covenant, condition or agreement of this Lease.

**19. REMEDIES CUMULATIVE**

19.1. No exercise of a specific right or remedy by the Board of Education or by the Regional District precludes it from, or prejudices it in, exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.

**20. NO FETTERING AND POWERS PRESERVED**

20.1. Nothing contained or implied in this Lease shall fetter in any way the discretion of the Board of Education or the Regional District. Further, nothing contained or implied in this Lease shall affect the Regional District's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*.

**21. TIME**

21.1. Time is of the essence.

**22. NOTICES**

22.1. Any notice required to be given under this Lease shall be deemed to be sufficiently given:

- (a) if delivered, at the time of delivery, and

- (b) if mailed from any government post office in the Province of British Columbia by prepaid, registered mail and addressed as follows:

**if to the Regional District:**

**REGIONAL DISTRICT OF NANAIMO**

6300 Hammond Bay Road  
Nanaimo, British Columbia V9T 6N2  
Attention: General Manager of Recreation and Parks

**if to the Board of Education:**

**NANAIMO LADYSMITH PUBLIC SCHOOLS**

395 Wakesiah Avenue  
Nanaimo, British Columbia V9R 3K6  
Attention: Secretary-Treasurer

or at such other address each party may from time to time designate, then the notice shall be deemed to have been received seven (7) business days after the time and date of mailing. If, at the time of mailing of the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow down, lock out or other labour dispute, then the notice may only be given by actual delivery of it.

**23. NET LEASE**

- 23.1. This Lease shall be a complete carefree net lease to the Board of Education as applicable to the Premises and the Board of Education shall not be responsible during the Term for any cost, charges, expenses or outlays of any nature whatsoever in respect of the Premises or the contents thereof except those mentioned in this Lease.

**24. DISPUTE RESOLUTION**

- 24.1. The parties will make every effort possible to resolve disputes and misunderstandings. Failing amicable resolution, all disputes, disagreements and questions whatsoever which shall arise between the parties concerning this Lease or the construction or application thereof for any clause or thing herein contained or any account, debts or liabilities to be made hereunder or as to any acts, deeds or omission of any party or as to any other matter in any way relating to the subject matter of this Lease or the rights, duties or liabilities of any person under this Lease, shall first be referred to mediation using a licensed mediator in the Province of British Columbia, but if mediation does not produce a settlement, then any party may commence a court proceeding to a court of competent jurisdiction in order to resolve such dispute, disagreement.

## **25. INTERPRETATION**

### 25.1. In this Lease:

- (a) when the singular or neuter are used in this Lease they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require;
- (b) the headings to the sections in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or any provision of it;
- (c) all provisions of this Lease are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph;
- (d) unless expressly stated otherwise, any reference in this Lease to a requirement for the consent or permission of the Regional District is deemed to be a reference to the consent or permission of the Regional District granted or withheld in the Regional District's sole, arbitrary and unfettered discretion.

25.2. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

## **26. ENTIRE AGREEMENT**

26.1. This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date hereof with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.

## **27. BINDING EFFECT**

27.1. This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and administrators.

**28. APPLICABLE LAW**

28.1. This Lease shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

**29. AMENDMENT**

29.1. The parties hereto may by agreement amend the terms of this Lease, such amendment to be evidenced in writing and executed by both parties.

**30. LEGAL FEES**

30.1. Any documents required to be prepared under this Lease, including the registration of the Lease at the Land Title Office, any assignment agreement or waiver with respect to a mortgage, is to be prepared by the Regional District's lawyer, at the option of the Regional District, at the Regional District's expense. The Regional District is responsible for the payment of any fees for registration of the Lease, including payment of any property transfer tax.

**31. COUNTERPARTS**

31.1. This Lease may be executed in separate counterparts, each of which will be an original and all of which taken together will constitute one and the same Lease, and any party hereto may execute this Lease by signing any such counterpart.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the School Board has signed and sealed this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT No. 68 (Nanaimo-Ladysmith),** by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

IN WITNESS WHEREOF the Regional District has signed and sealed this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**REGIONAL DISTRICT OF NANAIMO,** by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

Schedule "A" - The Premises



## Schedule “B” – The Improvements

Any construction on the Premises that is necessary or incidental to allow them to be used for the “Permitted Uses” described in paragraph C of the preamble to this Lease, including, without limitation, the improvement, alteration, construction, operation and management of the Premises for a community centre and Regional District of Nanaimo Electoral Area A Community Park.

The parties agree that the Regional District may alter the Facility or construct additional buildings and improvements on the Lands to accommodate and enhance the Permitted Uses of the Premises, provided such alterations or construction is done in a good and workmanlike manner, meeting the Building Code and in accordance with the terms of this Lease. The following Improvements are specifically permitted:

- Structural Retrofit: Seismic retrofits in accordance with Ministry of Education seismic retrofit guidelines in place at the time of the design or performance of the work;
- Renewal of Life-Expired Building Enclosure Components: replacement of roof system, windows, exterior doors, exterior painting and improve insulation R Values;
- Hazardous Materials Abatement;
- Mechanical/Electrical/Plumbing/ Civil/Life Safety Code Upgrades;
- Replacement and/or Repair of Major items nearing end of useful life;
- Site Parking and Access Improvements (including Fire Access Route Upgrades);
- Other Code-related Upgrades: Non-structural improvements and modifications to building such as WCs, entrances and exterior access, including accessible parking/drop-off;
- Other Related Upgrades that would improve the Permitted Uses and comply with the current BC Building Code Assembly Group A Division 2; and
- Improvements may require compliance with current and future RDN policies such as: Wood First and Green Building.

Schedule B is not considered to be comprehensive. Work within Schedule B may include complete or partial demolition of an existing building system or components to meet regulatory compliance under the Permitted Uses.

**REGIONAL DISTRICT OF NANAIMO**

**CORPORATE OFFICER'S CERTIFICATION**

I, the undersigned Corporate Officer, as the person assigned responsibility for corporate administration under section 236 of the *Local Government Act*, certify the results of the alternative approval process that was conducted to obtain the approval of the electors for a 25-year Lease Agreement between the Regional District of Nanaimo (RDN) and the Board of Education of School District No. 68 (Nanaimo-Ladysmith) to enable the RDN to use the South Wellington School site for community uses including a community centre and a community park as follows:

- 5,187 Estimated number of electors
- 0 Number of elector response forms submitted by the deadline
- 0 Number of elector response forms rejected
- 0 Number of elector response forms accepted
- 0% Percentage of estimated electors who validly submitted elector response forms

and in accordance with Section 86 of the *Community Charter*, the approval of the electors was obtained.

DATED this 15th day of February, 2022

  
\_\_\_\_\_  
Corporate Officer