

ATTACHMENT A

JOINT USE LICENCE AGREEMENT

John Barsby School and Harewood Centennial Park

THIS AGREEMENT made as of 1ST day of SEPTEMBER ~~OCTOBER~~ 2023 (the "Effective Date") is

BETWEEN:

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

(the "City")

AND:

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

(the "Board")

WHEREAS

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

Parcel Identifier Number 008-734-666
SECTION 17, RANGE 7, SECTION 1, NANAIMO DISTRICT, PLAN 630

Parcel Identifier Number 008-734-623
SECTION 1, NANAIMO DISTRICT, PLAN 630 SECTIONS 19 & 20 RANGE 7, LYING SOUTHERLY OF
THE SOUTHERLY BOUNDARY OF PLAN 64 R/W

Parcel Identifier Number 008-734-704
SECTION 18, RANGE 7, SECTION 1, NANAIMO DISTRICT, PLAN 630 EXCEPT THAT PART
DESCRIBED AS COMMENCING AT THE S/WLY CORNER OF SAID SECTION THENCE NLY ALONG
WLY BOUNDARY OF SAID SECTION, A DISTANCE OF 208 FT, THENCE SLY & PARALLEL TO THE
SAID WLY ETC

Parcel Identifier Number 008-734-381
PARCEL A (24631W), SECTION 18, RANGE 7, NANAIMO DISTRICT, PLAN 630

(the "City Lands") as shown on Schedule A;

- B. 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 008-736-685
Plan VIP630 Section 17 Range 8 Land District 32 Except Plan 8725 & SEC 1

Parcel Identifier Number 008-736-740

Plan VIP630 Section 18 Range 8 Land District 32 & SEC 1 EXC THAT PT SHOWN OUTLINED IN RED ON PL 136R

Parcel Identifier Number 008-736-839

Plan VIP630 Section 18 Range 8 Land District 32 & SEC 1, THAT PT SHOWN OUTLINED IN RED ON PL 136R

Parcel Identifier Number 008-736-901

Plan VIP630 Section 19 Range 8 Land District 32 & SEC 1, THAT PT LYING S OF CHASE RIVER

(the **"Board Lands"**) as shown on Schedule A;

- C. The City is constructing two all-weather synthetic turf fields on a portion of Harewood Centennial Park (the **"Park"**) addressed as 592 Seventh Street as shown on Schedule A;
- D. These fields will be known as **"East Field"** and **"West Field"** as shown on Schedule B;
- E. East Field and the plaza between West Field and East Field, and other fixtures constructed within the area marked as **"Licence Area"** on Schedule B, will be known as the **"Facility"**;
- F. Pursuant to the terms in the Agreement below, the Board will contribute \$700,000 (the **"Board Contribution"**) to the cost of construction by the City of the Facility;
- G. Situated on the Board Lands at 550 Seventh Street is John Barsby Secondary School, fields and parking (the **"School Facility"**) as shown on Schedule A;
- H. The City and the Board (the **"Parties"**) agree that, in consideration of the Board Contribution for construction of the Facility, and for providing City access to the School Facility parking, the City will license jointly with the Board to share use of the Facility, under the terms and conditions set out herein; and

NOW THEREFORE THIS AGREEMENT WITNESSES THAT 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 Facility, and to provide for the efficient and effective management and administration of the Facility, without compromising the Parties' respective authority and mandate.
- (b) This Agreement does not grant any interest in the land comprising the City Lands to the Board, nor does it grant any interest in the Board Lands to the City.

2.0 FACILITY

2.1 Maintenance and Repairs

- (a) Any maintenance of the Facility is to be performed by the City as detailed in this section 2.1, unless otherwise mutually agreed upon between the Parties.
- (b) The City will schedule its regular weekly maintenance of the Facility from 8:00 a.m. to 12:00 p.m. on Tuesdays, and on school Professional Development days. The City reserves the right to change the scheduled day(s) of maintenance. If the City requires a change to the scheduled maintenance day(s), it will provide notice to the Board representative.
- (c) The City shall be responsible for the repair, maintenance and upkeep of the Facility. The City shall maintain, or cause to be maintained, the Facility in a lawful, sanitary, neat, tidy and safe condition and free from nuisance.
- (d) Field equipment maintenance and repair requirements, including but not limited to nets, goals, and uprights markers, 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) All Parties and third parties will adhere to the City of Nanaimo Field Use Guidelines, Fees and Charges Regulations and the Parks and Recreation use bylaws. The Board will not in any circumstances be required to pay any fee or charge for any use of the Facility during School Times (defined in section 3.2(a)).

2.2 Capital Reserve Fund

- (a) The Board and the City will each pay annually on each anniversary of the Effective Date of this Agreement a capital contribution to be deposited into a capital reserve fund (collectively, the “**Capital Reserve Fund**” or the “**CRF**”) to be used by the City only for major capital improvements (as determined by the City), or for replacement of components, of the Facility, West Field and/or East Field. The contribution will be \$25,000 in the first year, with future contributions made in the same initial proportion, and reflecting inflation over subsequent periods calculated by using changes in the Consumer Price Index (all items) as published by Statistics Canada for Victoria, BC.
- (b) The City shall maintain a separate account for the operating expenses and revenues of the Facility. At the end of the year, any unallocated positive balance in the operating account will be placed in the CRF, including any interest earned on funds held in interest bearing accounts over the period.
- (c) Any remaining balance of the CRF that has not been applied as agreed under this section 2.2 shall upon expiry, or any termination of this Agreement, be equally divided and repaid to the City and to the Board.

3.0 JOINT USE OF FACILITY

3.1 City Access to the Facility

Throughout the Term (defined in section 8.1), the City shall have first right of access to use the Facility for public recreation purposes ("**City Use**") as follows:

- (a) from 6:00 p.m. to 7:00 a.m. on days when school is in session during the regular school year; and
- (b) with no restricted times on days when school is not in session

3.2 School Access to the Facility

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

- (a) from 7:00 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) the Board agrees that the Facility use and access during School Times shall not be assigned to third parties who are independent of any educational programs operated by the Board. Any inquiries regarding Facility use during School Times by third parties, will be forwarded to the City for consideration, with booking requirements and consent possibly subject to conditions or reasonably withheld;
- (c) the Board shall be entitled to book the Facility for School Use outside of School Times and shall pay a fee for any such use equal to the lowest rate charged by the City to any Community User; and
- (d) During the Term the City will manage all bookings of the Facility (outside of School Times) as per the City's Field Use Guidelines and Fees and Charges Bylaw.

- 3.3 The Board must ensure that prior to vacating the Facility at the time under 3.2(a), and after any period of use of the Facility, that the grounds are 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 parties acknowledge that the Smoking Regulation Bylaw 2018 No. 7268 prohibits the use of tobacco, cannabis or other smoked/vaped substance (the “**Smoking Ban**”), and the City prohibits the consumption of alcohol (the “**Drinking Ban**”), in all City Parks. The Parties agree that during the Term, while either Party occupies the Facility, they will 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 Facility.

3.7 Taxes

The Board will pay when due all Goods and Services Taxes payable in respect of its use of the Facility.

4.0 CITY USE OF SCHOOL FACILITY & SCHOOL USE OF OTHER PARK AMENITIES

4.1 Parking

The Board agrees that incidental use of the Board’s paved parking area located on Board Lands and illustrated on Schedule A, by users of the Facility and/or other park amenities, will be an acceptable use of the School Facility parking area outside of regular school hours.

4.2 City Access to School Facility

The Board and the City will explore City use of the School Facility outside of regular School Use and School Times, including use of the gymnasium and field.

4.3 School Access to Other Park Amenities

The City will not unreasonably deny Board access to the other park amenities for School Use, as follows:

- (a) the Board shall be entitled to book the other park amenities, including West Field, and shall pay a fee for any such use equal to the lowest rate charged by the City to any Community User;
- (b) during the Term, the City will manage all bookings of the other park amenities as per the City's Field Use Guidelines and Fees and Charges Bylaw subject to maintenance and security requirements by the City; and
- (c) the Board must ensure that prior to vacating the other park amenities, after any period of use, that the grounds are left clean and litter-free.

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 Facility and for the delegation of operating authority within those parameters to the Operating Committee, subject to section 6.2.

5.2 Operation Policies

The use and operation of the Facility shall be subject to the policies, regulations and conditions of the City and Board 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 Facility 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 General Manager of Parks, Recreation and Culture.

6.2 Operating Committee Mandate

The Operating Committee's mandate shall be to work in consultation with local residents, local sports groups, parent advisory council, the City and the Board to provide an inclusive and coordinated community-based approach to the planning, programming and scheduling of the Facility 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 Facility in order to assure maximum use of the Facility 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 Facility will be paid by the City. These include limited security services, equipment purchase and repair costs, utilities, including field maintenance, garbage removal and lighting, and will be reviewed each Operating Year. Exceptions shall include willful damage arising from School Use not in compliance with Field Use Guidelines; the cost of such damage would be charged to and paid by the Board, net of any insurance coverage.
- ii. The Operating Committee, when deemed necessary, will review and refer any electrical, structural and plumbing fixture maintenance needs to the City, 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 Chief Administrative Officer shall provide the representative appointed by the Secretary Treasurer an annual report pertaining to the joint use of the Facility with details of all bookings, revenue and expenditures including, without limitation, full details of all deposits to and expenditures from the Capital Reserve Fund and the current balance in the Capital Reserve Fund, and such other 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 Chief Administrative Officer to review the budget and to discuss any additional anticipated operation, maintenance and equipment costs pertaining to the future joint use of the Facility as set out in section 3.0.

(c) Scheduling/Time Availability

- i. The Operating Committee may provide input for the priority of use and access to the Facility 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 Facility 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 City or the Board, requires a minimum of 10 Business Days' notice prior to the event date.

(d) Rental of Facility

Agreements for use of the Facility shall be regulated by the City's policy on field use and the payment of fees per the Parties' mutually agreed upon form of rental agreement. All revenues for use of the Facility by third parties shall be payable to the City.

(e) Insurance/Liability/Security

- i. The Board agrees that any School Use of the Facility 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.
- ii. The City agrees that any City Use of the Facility 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.
- 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 Facility, in the amount of \$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 Facility 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 Facility included in the agreement.

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

(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 Facility. 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 Facility 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 Facility. If the Designated Representatives are unable to resolve the dispute, they shall refer the dispute to the Board and City. If the Board and City are unable to agree on a resolution of a dispute, 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 Board shall not assign its interest in this Agreement or any renewal thereof without the prior written consent of the City, 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 September 1st, 2023 and ending August 31st, 2033, 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 Facility is substantially damaged or destroyed to the extent that the Facility or a substantial portion thereof is rendered unusable, or convenient access to the Facility cannot be had, all as determined by the City acting reasonably, then the City may, at its option, elect to not rebuild or repair the Facility and may terminate this Agreement and all responsibility for payment under section 2.2(a) will end as of the date of such damage or destruction and such termination will operate so as to relieve the Board of any liability arising from such damage or destruction. There will be no compensation to the Board 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, except that if the City exercises this right to terminate before the expiry of the initial Term, then the City shall pay to the Board as full and final settlement of any claim by the Board an amount equal to the remaining balance of the Board Contribution, amortized over ten (10) years on a straight-line basis.

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

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:


Name: RICHARD HAROINE
Title: GM / ACT CAO

Name:
Title:

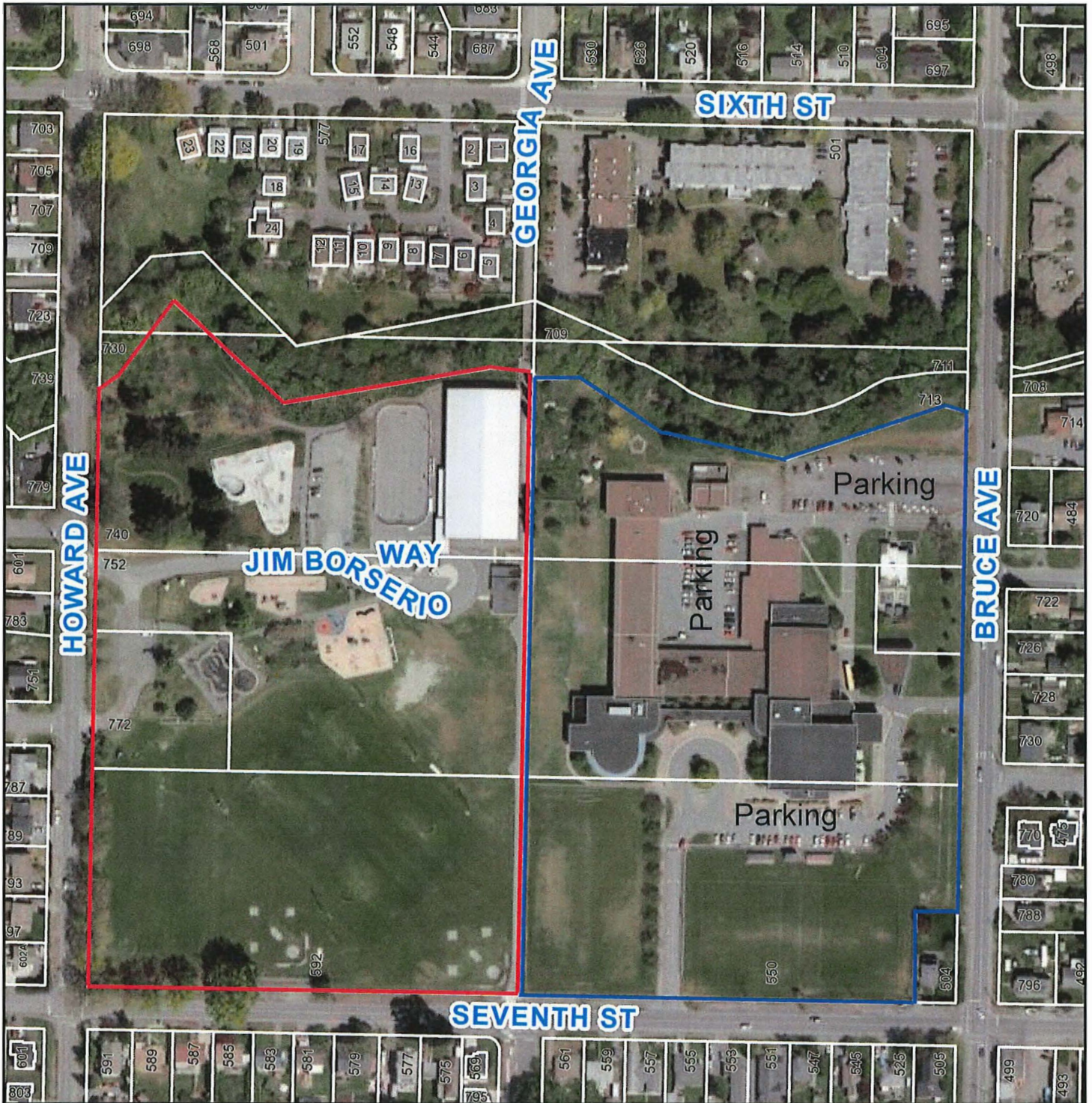
**THE BOARD OF EDUCATION OF SCHOOL
DISTRICT NO. 68 (NANAIMO-LADYSMITH)**

By its authorized signatories:

 September 28, 2023
Name: Mark Walsh
Title: Secretary-Treasurer

Name:
Title:


Schedule A City Lands / Board Lands



- City Lands/Park
- Board Lands/School Facility

Schedule B
Licence Area/Facility



 Licence Area/Facility