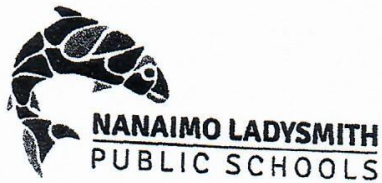


## Appendix 2



From the Board of Education  
Email: BoardOfEducation@sd68.bc.ca

February 10, 2017

Tracy Samra  
Chief Administrative Officer  
City of Nanaimo  
455 Wallace Street Nanaimo, B.C. V9R 5J6

RE: Memorandum of Understanding regarding:

Potential Sale of Portions of the Nanaimo District Secondary School (the "**School**")  
lands located at 395 Wakesiah Avenue, Nanaimo, B.C., legally described as:

PID: 025-088-777 Lot B Section 1 Nanaimo District Plan VIP71878, Except Part in Plan  
VIP71881 (the "**Lands**"), and

Potential Construction of a Lit All Weather Synthetic Turf Field on the Lands

The purpose of this Memorandum of Understanding ("**MOU**") is to set out the basic terms and conditions upon which The Board of Education of School District No.68 (Nanaimo-Ladysmith) (the "**Board**") would be prepared to negotiate with City of Nanaimo (the "**City**") to sell to the City a portion or portions of the Lands, as shown on Schedule A attached hereto, as may be agreed between the Board and the City (collectively, the "**Parties**", and individually a "**Party**"), each in their discretion, subject to settlement and execution of a definitive agreement of purchase and sale (a "**PSA**"), and the basic terms and conditions on which the Parties would jointly finance the construction of a lit all weather synthetic turf field (the "**Field**") on the remainder of the Lands, subject to settlement and execution of a definitive funding agreement (a "**Funding Agreement**").

Except as provided in sections 1 and 3 to 6 below, this MOU is not intended to constitute a binding agreement but rather is merely a statement of the respective intentions of the Parties with respect to the potential negotiation of a PSA and a Funding Agreement. The obligations of the Parties to proceed with a PSA and a Funding Agreement are subject to the Parties negotiating, settling, executing and delivering a PSA and a Funding Agreement that are mutually acceptable to both of the Parties, in their respective discretion, consistent with the terms and conditions set forth herein and containing further terms and conditions. Subject to the foregoing, the Parties agree as follows:

1. Good Faith Negotiations: The Parties agree to negotiate the terms of a PSA and a Funding Agreement in good faith and in accordance with the terms of this MOU until the earlier of settlement and execution of a PSA and a Funding Agreement of this MOU under section 2 hereof or termination of this MOU under section 3 hereof.

2. Anticipated Business Terms: The Parties anticipate that they will reach mutual agreement on a PSA and a Funding Agreement that contain the following and other terms and conditions:

(a) PSA

- i) the City will purchase 5.94 hectares (14.8 acres) of the Lands from the Board for \$4,100,000, to be defined by subdivision of the Lands pursuant to a subdivision plan in a form approved by each of the Parties, in their respective discretion;
- ii) the PSA shall have a closing date of June 30<sup>th</sup>, 2017, subject to extension by mutual agreement between the parties;
- iii) the Board's obligation to complete the sale is conditional on the Board completing its land disposal process, which includes a public process, adoption of a bylaw by the Trustees of the Board in their discretion, and written approval of the sale by the British Columbia Minister of Education (the "**Minister**"), in the Minister's discretion;
- iv) the Board will grant the City a long-term license (the "**Use Agreement**") to use the Field, which will include terms addressing maintenance, repair and replacement of the Field, and which will oblige the Board to compensate the City in the event of termination;
- v) the City's obligation to complete the sale is conditional on execution of the Use Agreement which will include a track field use at a rental rate of \$1.00 for the length of the term;
- vi) the City's agreement is conditioned upon Council's approval, and approval of a DVP to vary works and services;
- vii) the City will be solely responsible for all subdivision costs and approvals relating to the proposed subdivision of the Lands;
- viii) the Board will be solely responsible for all costs associated with completion of the Board's land disposal process and for applying for the approval of the Minister;
- ix) the City will be solely responsible for any goods and services taxes payable in respect of the Purchase Price or any interest thereon, and from and after the Completion Date, the City will be solely responsible for any and all applicable property taxes, utility costs, and any other federal, provincial or municipal charges or assessments relating to the Lands;
- x) the PSA will have no statement of adjustments in connection with the purchase and sale of the Lands, including, without limitation, property taxes, local improvement charges, utilities, and all other matters customarily the subject of adjustment on the sale of properties similar to the Lands;
- xi) each Party will be solely responsible for its own legal costs; and
- xii) each Party will work together to ensure any issues arising from the proposed subdivision including, without limitation, long term access, utility connections and



irrigation issues, are resolved prior to completion of the subdivision, to the mutual satisfaction of the Parties in their respective discretion.

(b) Artificial Turf Field Project Funding Agreement

- i) the Field will be located on the Lands generally as shown on Attachment A to this MOU;
- ii) each of the Parties will contribute \$1,200,000 to the Field construction costs;
- iii) Funding Agreement will set out how the project will be jointly constructed, managed, renewed and removed at the end of its life;
- iv) each of the Parties will share the risk of cost overruns, subject to the terms of the Funding Agreement;
- v) design work for the Field will be led by the Board and will begin immediately upon this MOU being settled and executed by the Parties;
- vi) the Parties will aim for construction of the Field to be completed by the end of August, 2017; and
- vii) the Use Agreement will be settled and executed by the Parties prior to commencement of construction of the Field.

3. Termination: If the Parties have not negotiated, settled and executed a PSA and a Funding Agreement on or before that date which is NINETY (90) days following the execution of this MOU by both Parties, or such longer period as the Parties may agree to in writing, then this MOU will automatically terminate and be of no further force or effect except as specifically provided herein.

4. Confidentiality: The Parties will keep the terms of this MOU and any confidential information received in respect of the Property in strict confidence, other than:

- (a) to provide the same to their respective representatives and advisors on the condition that such representatives and advisors keep the terms of this MOU and such information in strict confidence; or
- (b) to the extent that may be required by law or by a court or regulatory authority having jurisdiction.

If the transaction contemplated by this MOU is not completed for any reason, then each of the Parties shall, upon the request of the other Party, promptly return to that other Party all confidential documents received from that other Party.

5. Exclusivity

Following execution of this MOU, the Board will not negotiate or enter into discussions with, or offer the Lands or any interest therein to, any party other than the City, unless and until the time herein provided for settlement and execution of a PSA and a Funding Agreement has expired without a PSA and a Funding Agreement being settled and executed by both Parties.

6. Execution and Delivery

This MOU may be executed by the Parties in counterpart and transmitted by e-mail or facsimile, and if so executed and transmitted, this MOU will be for all purposes as effective as if the Parties had each executed and delivered a single original instrument.

If all the terms and conditions stated herein are acceptable, please sign and return a copy of this MOU by 4:00 P.M. (local Nanaimo time) on February 14, 2017.

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

By its authorized signatory:

Name: Carrie McVeigh

Title: Secretary-Treasurer

Accepted and agreed to by **CITY OF NANAIMO** this 10 day of February, 2017:

By its authorized signatory:

Name: Tracy Samra

Title: City Manager

Sky Snelgrove

Sky Snelgrove  
Deputy Corporate Officer  
City of Nanaimo



**SCHEDULE "A"**  
**Lands**

