

Regional District of Nanaimo Board – Meeting Date: January 10, 2023

This document contains closed 'in-camera' meeting decisions that have been released because they are no longer considered sensitive.

Memorandum of Understanding - Downtown Transit Exchange

23-IC-004

It was moved and seconded that the City of Nanaimo Transit Exchange – Memorandum of Understanding with the Regional District of Nanaimo, City of Nanaimo and BC Transit, as presented in Attachment 1, be approved.

CARRIED UNANIMOUSLY

Released: September 22, 2023

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding dated for reference February 1, 2023

BETWEEN:

CITY OF NANAIMO

an incorporated municipality having an address at:
455 Wallace Street,
Nanaimo, BC, V9R 5J6
(the "City")

AND:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2
(the "RDN")

AND:

BC TRANSIT

520 Gorge Rd East
Victoria, BC V8W 9T5
(“BC Transit”)

(collectively, the "Parties")

WHEREAS:

- The City is the registered owner of certain land located at 565, 575, 581, 589 and 595 Terminal Avenue and 35 and 45 Cavan Street, legally described under parcel identifiers:
 - 565 Terminal Avenue: 008-850-682, LOT 26, BLOCK 13, OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT, PLAN 584; and
 - 575 Terminal Avenue: 006-218-962, LOT F ON THE BED OF THE PUBLIC HARBOUR OF NANAIMO, PLAN 2958
- 581 Terminal: 006-218-920, LOT E, OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, PLAN 2958;
- 589 Terminal: 006-218-873, LOT D OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT, PLAN 2958 EXCEPT PART IN PLAN 49976;
- 595 Terminal:
 - 007-708-432, LOT 19, BLOCK 13, SECTION 1 AND THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT, PLAN 584, EXCEPT PART IN PLAN 49976;
 - 006-218-661, LOT A, OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT, PLAN 2958, EXCEPT PART IN PLAN 49976;
 - 006-218-768, LOT B, OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT, PLAN 2958, EXCEPT PART IN PLAN 49976; and
 - 006-218-822, LOT C, OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT, PLAN 2958, EXCEPT PART IN PLAN 49976,

- 35 Cavan Street: 008-851-115, LOT 16, BLOCK 15, SECTION 1, NANAIMO DISTRICT, PLAN 584
 - 45 Cavan Street: 008-851-093, LOT 15, BLOCK 15, SECTION 1, NANAIMO DISTRICT, PLAN 584
 - (the "Property")
- The Parties are interested in developing the Property to develop a Downtown Transit Exchange at the Terminal Avenue properties and a respite facility at the Cavan Street property (the "Project"), draft sketches of which is shown on Attachment A, to be located at on the Property, which area is shown on Attachment B.
 - The Parties seek to secure project funding through the Investing in Canada Infrastructure Program (ICIP) for the Project.
 - This Memorandum of Understanding ("MOU") sets out the principles of agreement to the scope of work, approach to project management, funding, and project delivery.
 - This MOU is a precursor to a Project Agreement. The MOU is expected to support the process of BC Transit pursuing federal and provincial funding contributions for the Project.
 - The Project is subject to the following approval inputs on or before March 31, 2023.
 - Approval of a BC Transit business case;
 - Successful ICIP funding application to the Government of Canada;
 - RDN and City approval and the development and negotiation of a Project Agreement by the Parties; and
 - The development and execution of any land use agreements between the Parties to include the area(s) affected by the Project for transit use, to allow BC Transit to capitalize the funding for the Project and such other amendments as the Parties agree.

NOW THEREFORE the Parties wish to set out their mutual understanding and intentions in this MOU in order to facilitate more in-depth discussion and negotiations.

A. PROPERTY ACQUISITION

Commitments from City:

- a) The City intends to grant a land lease of the Property to the RDN for a term of 20-years before commencement of the Project.
- b) The City will hire an appraiser at the City cost, to prepare a fair market appraisal for the 20-year lease of the Property.
- c) The City intends to arrange the survey plan, at the City's cost, to consolidate the Property.
- d) The City intends to pay the advertising costs required to publish any notices required under the Community Charter.
- e) The City intends to pay their own legal fees in connection with granting a land lease of the Property to the RDN.

- f) The City acknowledges that costs associated with acquiring the Property are not eligible for ICIP funding.

Commitments from RDN:

- a) The RDN intends to seek approval from the RDN's Board to lease the Property from the City.
- b) The RDN will commit to paying the appraised leased market value starting on the lease commencement date for the 20-year lease term.
- c) The RDN intends to pay the advertising costs required to publish any notices required.
- d) The RDN will pay their own legal fees in connection with acquiring a land lease of the Property from the City.
- e) It is mutually understood that the RDN will be the lessee of the Property once granted by the City and BC Transit will be the owner of the Project assets for public transit purposes unless otherwise agreed to by the Parties. The RDN intends to provide a long-term sub-lease, subject to Section A (a) to BC Transit for the transit exchange for \$1.00 and will be outlined more particularly in the Project Agreement.

Commitments from BC Transit:

- a) BC Transit intends to commit to pursuing capital funding for the construction of the Project by developing a BC Transit business case for approval and subject to that approval, preparing and submitting an application for ICIP funding.
- b) BC Transit in collaboration with both the City and the RDN will draft the development of a comprehensive agreement respecting all aspects of the development and finalizing legal agreements for the Project (the "Project Agreement") between the Parties.

B. PROJECT AGREEMENT

- a) Subject to ICIP approval, the Parties intend to enter into a Project Agreement. The Project Agreement shall include, but is not limited to, the scope, delivery, schedule, budget, risk, decision-making processes and funding contributions of the Parties.
- b) The Parties will designate an owner's representative to form the Project Steering Committee. The Project Steering Committee Terms of Reference and authorities will be outlined in the Project Agreement.
- c) The City intends to assume responsibility for managing the delivery and construction of the Project deliverables under the terms of the Project Agreement.

C. FUNCTIONAL DESIGN AND CONSTRUCTION SERVICES

- a) The City has prepared the functional design plan (Appendix A) and Class D construction cost estimate, at the City's time and cost, for the Project on behalf of the Parties.
- b) The functional design and Class D construction cost estimate includes the following key elements:
 - i. Road and site works including new concrete curb and sidewalks, paving, cycling facilities, lighting, landscaping, line painting and incidental works
 - ii. Utility relocations / upgrades
 - iii. Electrical and signage
 - iv. Public realm/urban design plan prepared by architect or landscape architect

- v. Transit site amenities including; six standard bays, up to two rapid bus bays accommodating future expansion to articulated buses; and site furnishing (corresponding bus shelters), waste receptacles, bike racks, benches, and ancillary infrastructure)
 - vi. Transit respite facility including; an operator washroom, an operator breakroom and up to four layover bays.
- c) The Parties agree to obtain a letter of support for the Project from the Ministry of Transportation and Infrastructure, who has jurisdiction and ownership over Terminal Avenue.
 - d) Existing building demolition costing.
 - e) Secure SAFE Design Council certification.
 - f) Establish required Statutory Right of Ways.

D. PROJECT BUDGET AND COST SHARING

- a) The preliminary Project budget is estimated at \$14 million dollars. The Project budget will be further refined and will be submitted for review and approval by the BC Transit.
- b) The Parties intend to cost share on the Project which will form part of the Project Agreement and subject to all necessary approvals required by the Parties. Funding contributions are based on expected eligible and ineligible costs per BC Transit's current funding agreements with the Province.
- c) In the event the budget approved under ICIP is insufficient to fund the costs of the Project, the Parties may elect to reduce the scope of work or obtain additional sources of funding. Should increase contributions be required, these costs are subject to cost share agreements between the Parties and are based on a funding share of 46.69% Provincial and 53.31% RDN.
- d) The Parties understand that ICIP funding is subject to provincial and federal approvals and the Project is contingent on receiving ICIP funding contribution.
- e) The Project cost is intended to be reassessed after final site investigations, completion of detailed designs and tender award. The Project cost includes detailed design, engineering, construction, and Parties' costs which will be outlined in Project Agreement.
- f) The eligible costs will be shared based on ICIP funding allocations with 40% Federal, 40% Provincial and 20% RDN as per the capital contribution agreement between BC Transit and the Ministry of Transportation and Infrastructure. Ineligible project costs are traditionally cost shared at 46.69% Provincial and 53.31% RDN.

E. COMMUNICATION STRATEGY

- a) The Parties intend to prepare a public Communication Strategy for the Project. The Parties acknowledge that communications will follow the Communications Protocol outlined in the Canada – British Columbia Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program. In view of the confidential and sensitive nature of the ongoing negotiations amongst the Parties, but subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, the Parties agree that the contents of this MOU and future discussions will not be discussed or shared in a public forum unless the Parties agree, in writing, that such discussion or sharing is appropriate.

F. PROJECT DELIVERY AND SCHEDULE

The Parties will use their best efforts to work towards the following timeline for Project delivery:

Deliverables	Target Dates
BC Transit Business Case	February 2023
BC Transit ICIP Application	March 2023
BC Transit Project Agreement and prepare Communication Strategy by the Parties	Spring 2023
Receive All Approvals Required to Advance Project Execute Project Agreement	Summer 2023
Commence Detailed Design	Summer 2023
Complete Detailed Design	Spring 2024
Complete Lease Agreement from City to RDN	2024
Anticipated Construction	2024
Execute land use agreement(s)	2025
In Service (Substantial Completion)	2025
Total Project Completion and Project Closeout	2025

The Parties will make best efforts to facilitate the compliance of the Project with all necessary authorizations and approvals and all applicable statutes and bylaws, including environmental laws, and the issuing of permits, licenses, certificates and approvals for proper completion of the Project.

G. INTERPRETATION

- a) This MOU is to be governed and construed in accordance with the laws applicable in the Province of British Columbia.
- b) Nothing in this MOU affects or limits the statutory authority, discretion, rights, powers or duties of the Parties under the common law or any statute, bylaw or other enactment.
- c) Nothing contained in this MOU constitutes or may be deemed in any way to create an employment, agency, partnership, joint venture or other legal relationship between the Parties.
- d) The Parties acknowledge and agree that this MOU is not legally binding and does not create any binding legal obligations between the Parties. It does however, express the good faith intentions of the Parties to proceed in accordance its terms.
- e) This MOU may be signed by the Parties in one or more counterparts and transmitted by facsimile or electronic means and, if so signed and transmitted, then this MOU will be for all purposes as effective as if the Parties had delivered one single executed original MOU.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year written below.


CITY OF NANAIMO by its authorized signatories:

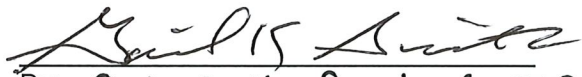

By: Mayor Leonard Krog, Mayor


By: Corporate Officer

Executed on 2023-Feb-01, 2023

REGIONAL/DISTRICT OF NANAIMO by its authorized signatories:


By: Vanessa Craig, Board chair


By: Gail Smith, Deputy Corporate Officer
Executed on 14 February, 2023

BC TRANSIT by its authorized signatories:

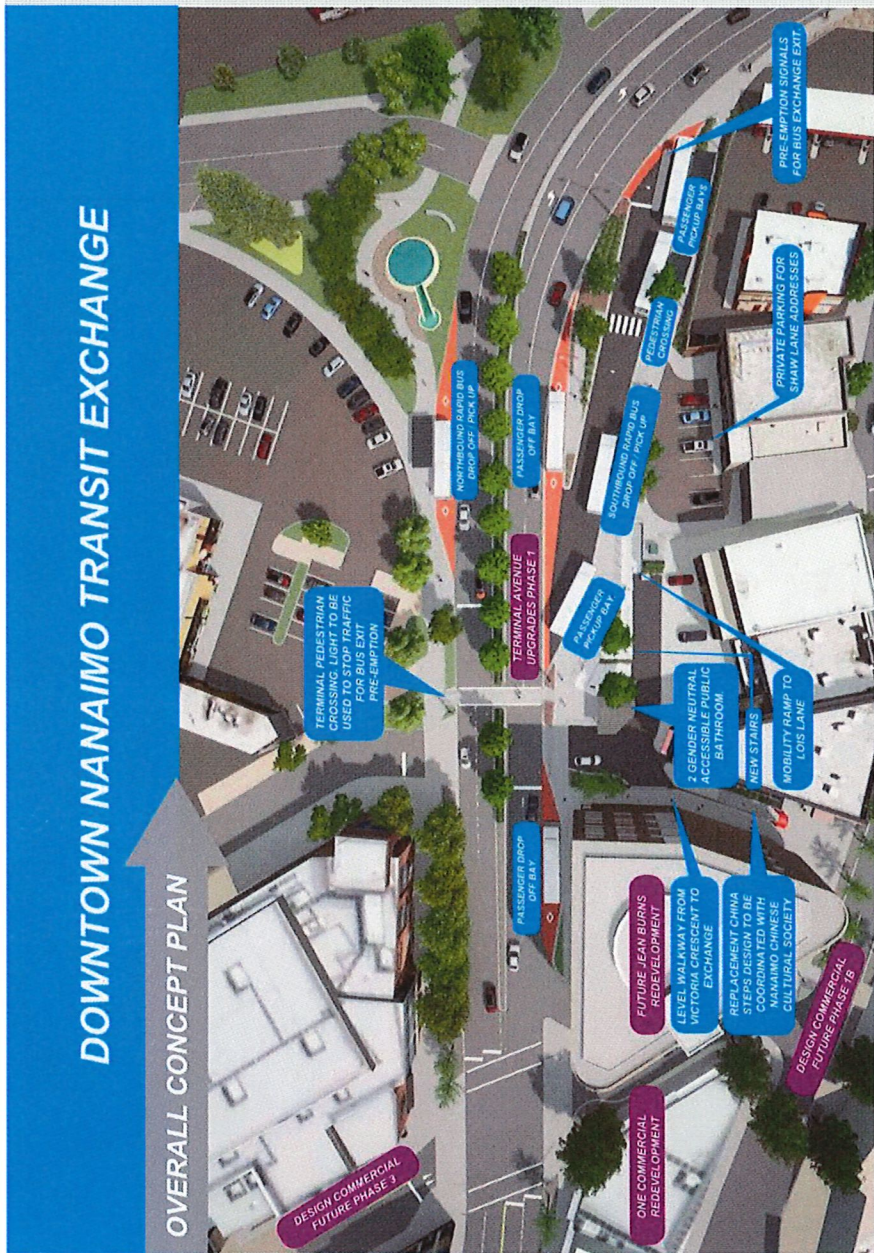

By: Aaron Lamb, Vice President and Chief Sustainability Officer


By: Levi Timmermans, Director Infrastructure Management

Executed on February 21, 2023

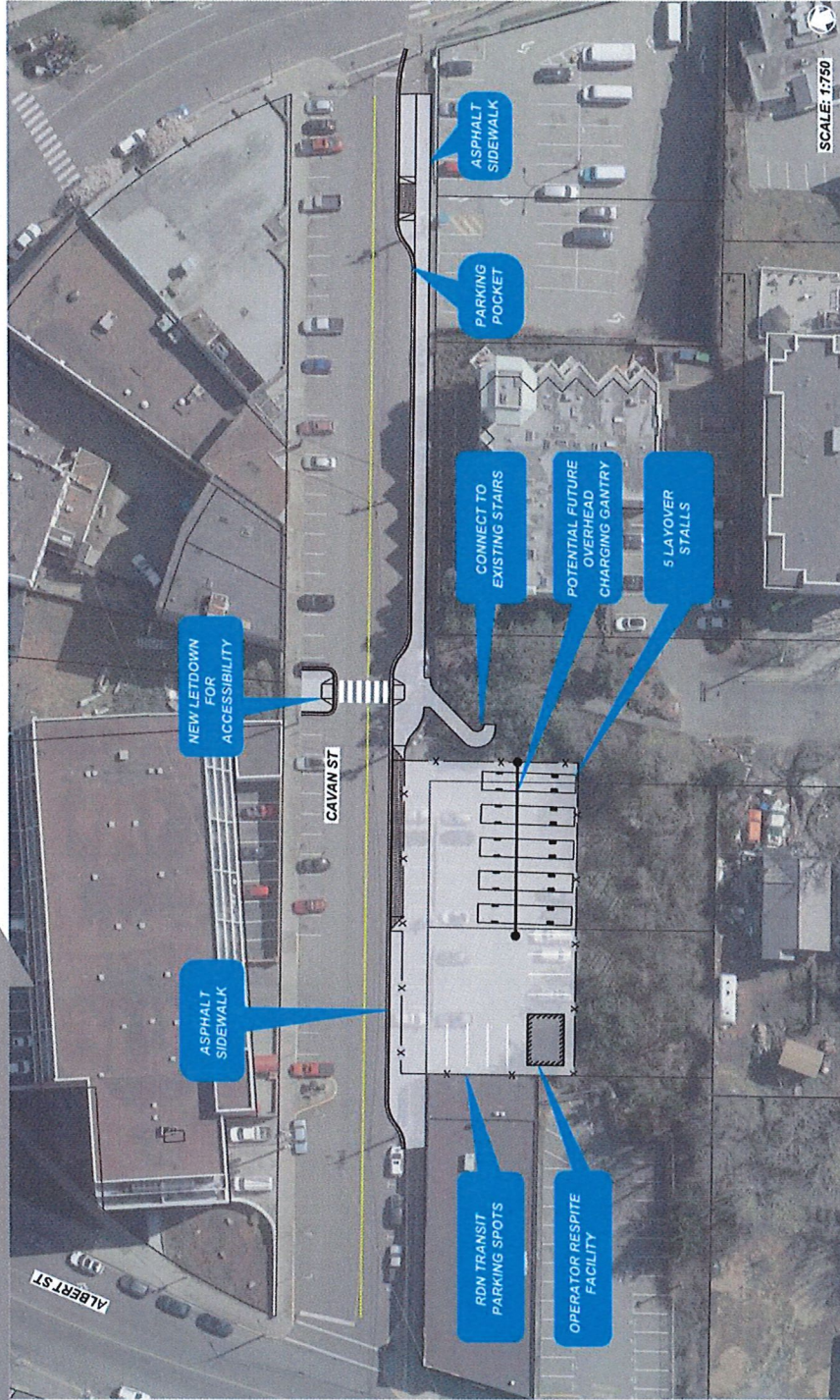
ATTACHMENT A

APPENDIX A – THE PROJECT
Concept – subject to refinement during detailed design



CAVAN STREET RESPITE LAYOUT

CONCEPT PLAN



ATTACHMENT A

APPENDIX B – THE PROPERTY

