

INDUSTRIAL REAL ESTATE PURCHASE CONTRACT

THIS CONTRACT is made effective this _____, 20 ____

BETWEEN:

THE CITY OF LETHBRIDGE

910 – 4th Avenue South
Lethbridge, AB T1J 0P6
Phone 403-320-3905
email: land@lethbridge.ca

(the “City”)

-and-

(name)

of _____

(address, fax number and email address)

(the “Buyer”)

WHEREAS the City is the registered and beneficial owner of the property municipally located at

_____ and legally described as follows:

(the “Property”).

AND WHEREAS the City has agreed to sell and the Buyer has agreed to buy the Property, including land and attached goods on the terms and subject to the conditions of this Contract.

THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged by each of the parties to this Contract, the parties agree as follows:

PURCHASE AND SALE

1. The Buyer agrees to purchase the Property from the City, and the City agrees to sell the Property to the Buyer, on the terms and subject to the conditions contained in this Contract, for the Purchase Price, subject to any adjustments as may be provided for in this Contract.

PROPERTY

2. Unless otherwise agreed in writing, title to the Property shall be subject to any reservations and exceptions stated on the certificate of title, non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature, and other non-financial encumbrances which have been specifically accepted by the Buyer as per attached Schedule "A" (the "**Permitted Encumbrances**").

THE OFFER

3. The Buyer hereby offers to purchase the Property for the sum of (\$_____00) Dollars (the "Purchase Price") plus Goods and Services Tax ("GST") as applicable.
4. The Buyer shall pay the Purchase Price by certified cheque, solicitor's trust cheque, bank draft or other agreed value as follows:

\$	Deposit (1.5%)
\$	Cash to Close
\$ _____	Total Purchase Price (excluding GST)

5. The Buyer agrees that all GST applicable to the purchase of the Property is in addition to the Purchase Price and shall be paid to the City's solicitor unless the City confirms any exemption, waiver or election. The Buyer's GST number is (if applicable) is _____RT0001.

CONDITIONS

6. Buyer's Conditions - The obligations of the Buyer described in this Contract are subject to the satisfaction or waiver of the following conditions precedent, if any. These conditions are inserted for the sole and exclusive benefit and advantage of the Buyer. The satisfaction or waiver of these conditions will be determined in the sole discretion of the Buyer. The Buyer agrees to use commercially reasonable efforts to satisfy these conditions. These conditions may only be satisfied or waived by the Buyer giving written notice (the "Buyer's Notice") to the City on or before 4:00 p.m. on _____, 20__ (the "Buyer's Condition Day"). If the Buyer fails to give the Buyer's Notice to the City on or before the Buyer's Condition Day, then this Contract will be ended and the Deposit will be returned to the Buyer

and all agreements, documents, materials and written information exchanged between the parties will be returned to the Buyer and the City respectively.

Within five (5) business days of the acceptance of this Contract, the City will provide to the Buyer true copies of all agreements/documents/materials which reasonably relate to the Property and the Buyer's Conditions and which are in the possession of the City or under its control (the "Documents"). The Documents are required by the Buyer in order for it to decide whether the conditions are satisfied or should be waived. Any delay by the City in providing the Documents will extend the Buyer's Condition Day, by a corresponding number of days.

a. **Due Diligence Conditions:**

- a. acceptable physical viewing/inspection of the Property;
- b. acceptable review of legal title for the Property and any unattached goods;
- c. acceptable review of any Permitted Encumbrances;
- d. acceptable review of any soil tests and environmental studies; and
- e. acceptable review of the following (if applicable):

b. **Additional inspection conditions:** The Buyer may also, at its expense, retain its own consultants to conduct such inspections, reviews and tests and to produce such observations, reports or assessments regarding the Property. In this regard, the Buyer and its authorized representatives will have access to the Property after the Final Signing of this Contract and during normal business hours in order to conduct all inspections, reviews and tests deemed necessary by the Buyer acting reasonably. The rights of any existing tenants must be respected and the Buyer will be responsible for all damages caused by them, or their representatives. The City will provide the Buyer with such written authorizations and other assistance when reasonably required by the Buyer to facilitate or to complete its inspections, review or tests. The Buyer, shall upon written request of the City provide to the City a copy of all surveys, soil tests and environmental studies as conducted by the Buyer on the Property

7. **City's Conditions:** The obligations of the City described in this Contract are subject to the satisfaction or waiver of the following conditions precedent, if any. These conditions are inserted for the sole and exclusive benefit and advantage of the City. The satisfaction or waiver of these Conditions will be determined in the sole discretion of the City. The City agrees to use commercially reasonable efforts to satisfy these conditions. These conditions may only be satisfied or waived by the City giving written notice (the "City's Notice") to the Buyer on or before 4:00 p.m. on _____, 20__ (the "City's Condition Day"). If the City fails to give the City's Notice to the Buyer on or before the City's Condition Day, then this Contract will be ended and the Deposit will be returned to the Buyer and all agreements, documents, materials and written information exchanged between the parties will be returned to the Buyer and the City respectively.

- a. Approval of the Contract by Lethbridge City Council;
 - b.
-

- 8. Subject to paragraphs 10 and 11, the Buyer and the City may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Contract is ended upon the giving of that notice.
- 9. Should the Buyer and the City both give written notice of the satisfaction or waiver of all conditions to the other party in the times and manner described above, and the Buyer subsequently fails to complete this Contract, the Deposit shall be forfeited to the City.

INSURANCE

- 10. The risk of loss or damage to the Property shall lie with the City until the Purchase Price is paid according to the terms of this Contract. If loss or damage to the Property occurs before the City is paid the Purchase Price, then any insurance proceeds shall be held in trust for the Buyer and the City according to their interests in the Property.

WARRANTIES & REPRESENTATIONS

- 11. The City represents and warrants to the Buyer that:
 - a. The City has the legal right to sell the Property;
 - b. The City is not in breach of any contract with respect to the Property;
 - c. The City is not in breach of any obligation to any third party with respect to the Property;
 - d. To the best of the City's knowledge, there is no legal action outstanding with respect to the Property;
 - e. Unless otherwise agreed by the Buyer, no brokerage fees or costs are due or payable by the Buyer with respect to this transaction; and
 - f. Within the meaning of the *Income Tax Act* (Canada), the City is not now, nor will be on the Closing Day, a non-resident of Canada nor an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada.
- 12. **The City makes no representations or warranties** and the Buyer acknowledges and agrees that they have made their own investigations and are satisfied with the results with respect to:
 - a. The boundaries and dimensions of the Property;
 - b. The quality, sufficiency or condition of the Property for any particular use or purpose;
 - c. The placement or adequacy of utility services to or on the Property except for as may otherwise be written in this Agreement;
 - d. The absence or presence of contaminants or hazardous substances in, on or under the Property;

- e. The adequacy of sub-soil conditions and the suitability for placing adequate foundations on the Property;
- f. Lot grading and drainage of the Property; and
- g. Compliance of the Property with respect to applicable municipal zoning or bylaws.

The terms "contaminants" and "hazardous substances" include but are not limited to biological materials and agents (whether hazardous or not), petroleum products and by-products, any contaminants, pollutants, dangerous substances, hauled liquid wastes, toxic substances, industrial wastes, hazardous wastes, hazardous materials, hazardous chemicals, and hazardous substances as defined in any federal, provincial or municipal legislation.

- 13. All of the warranties contained in this Contract are made as of and will be true at the Closing Day, unless otherwise agreed in writing.
- 14. The City and the Buyer each acknowledge that, except as otherwise described in this Contract, there are no other warranties, representations or collateral agreements made by or with the other party about the Property or any neighbouring lands.
- 15. The representations and warranties in this Contract may be enforced after the Closing Day, provided that any legal action is commenced within the time limits prescribed by the Limitations Act (Alberta).

CLOSING

- 16. Subject to compliance with the terms hereof, possession of the Property shall be available and given to the Buyer on or before 12:00 noon on _____, 20__ (the "Closing Day"). When the Buyer obtains possession, the Property and any included chattels will be in substantially the same condition as it was in when this Contract was accepted.
- 17. All normal adjustments for the Property, including, but not limited to, taxes, local improvement levy and assessments, municipal charges, rents, utilities, and tenant deposits applicable with respect to the Property shall be adjusted as of 11:59 P.M. on the Closing Day. The Buyer shall assume all local improvements, assessments and charges against the Property as of that time.
- 18. Closing documents shall include:
 - a. a transfer of land (the "**Transfer**") in registerable form together with a Statement of Adjustments and all other applicable conveyancing documents normally expected in a commercial transaction of this nature;
 - b. be prepared at the expense of the City and delivered to the Buyer's solicitor within a reasonable time to confirm registration prior to the Closing Day.

19. In the event the City fails to deliver the closing documents in the time and manner referred to above, the payment of the Purchase Price and any late interest shall be postponed until such reasonable time has occurred.
20. The City's solicitor may use the Purchase Price to pay out all financial obligations that are the City's obligation to pay or discharge. Within a reasonable period of time after the Closing Day, the City's solicitor will provide the Buyer's solicitor with evidence of all discharges, including a certified copy of the certificate of title.
21. All money due and owing to the City including GST, if applicable, shall be paid to the City on or before 11:59 P.M. on the Closing Day. If the City agrees to accept payment after the Closing Day, the Buyer shall pay interest at a rate of 3% per annum above the prime rate set by the Alberta Treasury Branches from time to time, calculated daily on all monies owing to the City, from the 11:59 P.M. on the Closing Day to and including the date that the monies owing have been unconditionally paid.

NOTICES

22. Any notice, demand or other communication required or permitted to be given to any party to this Contract must be in writing and either: (i) personally delivered; or (ii) sent by prepaid registered mail; or (iii) sent by facsimile machine, email or other similar electronic form of communication that has been tested prior to transmission to the address as set forth in this Contract, or such other address as each party may from time to time notify the other(s) in writing. Such notice is deemed to have been given on the date of delivery if delivered, or the fifth (5th) business day after mailing if mailed, or the first (1st) business day following the transmittal and receipt of the appropriate confirmation back if sent by electronic communication.

MISCELLANEOUS TERMS

23. The City in entering into this Contract is doing so in its capacity as an owner of real property and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Alberta and nothing in this Contract shall constitute the granting by the City of any approval or permit as may be required pursuant to the *Municipal Government Act*, R.S.A. 2000c. M-26 and any amendments thereto, and any other legislation in force in the Province of Alberta. The City, as far as it can legally do so, shall only be bound to comply with and carry out the terms and conditions stated in this Contract and nothing in this Contract restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.
24. All time periods, deadlines and dates in this Contract shall be strictly followed and enforced. All times will be Alberta time unless otherwise stated.

25. This Contract will be governed by the laws of the Province of Alberta, and the parties do attorn to the jurisdiction of the Courts of Alberta.
26. The parties acknowledge that this Agreement is subject to the Freedom of Information and Protection of Privacy Act (“FOIP”) and all of the terms and conditions of this Agreement shall be carried out in compliance with FOIP and any other applicable laws
27. This Contract may be signed in counterparts and delivered by facsimile machine, email or other similar electronic form of communication that has been tested prior to transmission, and such procedure shall be as effective as signing and delivering an original copy.
28. This Contract is for the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of corporate parties.
29. The Buyer may not assign, transfer or otherwise dispose of any of its rights or obligations hereunder without the prior written consent of the City, which consent will not be unreasonably withheld.
30. The division of this Contract into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Contract.
31. Words importing the singular number include the plural and vice versa; words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.
32. No waiver of any provision of this Contract shall constitute a waiver of any other provision nor shall any waiver of any provision of this Contract constitute a continuing waiver unless otherwise expressly provided.
33. The parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances, and provide such further documents and instruments required by the other parties as may be reasonably necessary or desirable to effect the purposes of this Contract and to carry out its provisions.
34. This document, including any attached schedules sets forth the entire agreement and understanding between the parties relating to the subject matter contained herein and merges and supersedes all prior discussions and agreements between them as to the subject matter herein.
35. Time shall remain of the essence of this Contract.

36. The following additional terms (if any) form a part of this Contract (or see attached Schedule "B"):

a. _____

b. _____

37. This Contract shall remain open for acceptance by the City until 4:00 P.M. on _____, 20__ or until revoked by the Buyer by way of written notice, whichever first occurs.

THIS SPACE IS LEFT INTENTIONALLY BLANK

Signed on _____, 20__.

If Buyer is a corporation:

If Buyer(s) are individual(s):

(print corporate name of Buyer)

(print name of Buyer 1)

Per: _____

(Buyer 1 signature)

I have the authority to bind the above corporation.

(print name and corporate title of person signing)

(print name of Buyer 2 if applicable)

(Buyer 2 signature)

(print name of witness to signatures)

(witness signature)

ACCEPTANCE

The City hereby accepts the Buyer's offer and agrees to sell the Property for the Purchase Price and subject to the terms and conditions of this Contract.

Signed on _____, 20__.

THE CITY OF LETHBRIDGE

Per: _____
Mayor

Per: _____
City Clerk

SCHEDULE A

Permitted Encumbrances:

Registered Number	Registration Date	Instrument	Interest Holder/Lienholder