

THIS MEMORANDUM OF UNDERSTANDING MADE AS OF THE \_\_\_\_ DAY OF \_\_\_\_\_, 2019

BETWEEN:

**URBAN DEVELOPMENT INSTITUTE,  
Edmonton Region  
(the “Developers”)**

- and –

**THE CITY OF EDMONTON  
(the “City”)**

WHEREAS:

- A. The City wishes to acquire lands identified in its statutory plans for LRT right-of-way (the “ROW”);
- B. The City and the Developers wish to set out a process for the fair acquisition of the ROW;
- C. The ROW will serve lands that are the subject of subdivision and will serve other areas of the City;

NOW THEREFORE the Parties enter into this non-binding Memorandum of Understanding (the “MOU”) to confirm their willingness to engage in a process for the fair acquisition of the ROW:

1. ROW Acquisition

The City intends to acquire the ROW from the Developers, as applicable, at the time of subdivision.

2. Price

- (a) The Parties acknowledge that it is fair and equitable for the City to pay the Developers fifty (50%) percent of the market value of the ROW based on Arterial Road Assessment Land Dedication Rates in effect at the time of subdivision approval.

- (b) With the agreement of the owner of the land to be acquired for the ROW (the "Landowner"), the payment for the lands may be:
  - (i) made at the time of subdivision approval; or
  - (ii) deferred with possible security for the payment to be provided by the City to the owner of the land; or
  - (iii) by way of land exchange.
- (c) The Developers acknowledge that any cash payment from the City will require that the payment be approved in the City's capital budget prior to the expenditure being made.
- (d) The form of agreement for the acquisition of ROW from the Landowner shall be as set out in Schedule "A" with modifications as appropriate and agreed to by the City and the Landowner.

### 3. Plan Registration

- (a) The City's intended acquisition of the ROW shall not delay registration of the contemplated subdivision plan.
- (b) If the City's acquisition of the ROW is not complete prior to registration of the subdivision plan, the City may be entitled to register a caveat under the *Land Titles Act*, based on an executed agreement between the City and the Landowner, against the Certificate of Title for the ROW (if a separate parcel) or the lands containing the ROW (if part of a larger parcel), which will protect the land from interim development and create a right to purchase by the City.

### 4. Miscellaneous

- (a) The parties agree to do such things, to issue such instructions and to execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the intentions of this MOU.
- (b) This MOU is not intended to be binding upon the parties hereto, their heirs and successors and is not intended to and does not create any legally binding obligations as between the City and the Developers, or its individual members. This MOU's sole purpose is to outline the Parties' intentions with respect to the acquisition of ROW.

- INTENTIONALLY LEFT BLANK -

IN WITNESS WHEREOF the Parties acknowledge this Memorandum of Understanding at Edmonton on the date and year first above.

**URBAN DEVELOPMENT INSTITUTE,  
Edmonton Region**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**CITY OF EDMONTON**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**SCHEDULE A**

**Vacant Land Acquisition  
City G.S.T. Registration #119326270RT0001**

**THIS AGREEMENT MADE BETWEEN:**

**The City of Edmonton  
(the "City")**

**- and -**

**(the "Owner")**

- A. The Owner is the registered owner of that land within the City of Edmonton, together with all improvements situate thereon, legally described in Schedule "A" attached hereto (the "Lands") and more specifically as shown on Schedule "B" attached hereto (the "ROW");
- B. The City wishes to acquire from the Owner the ROW for the purpose of assembly of an LRT right-of way;
- C. The ROW will serve the Lands and will serve other areas of the City;
- D. The Owner has agreed to sell and convey the ROW to the City, in accordance with the terms and conditions of this Agreement.

**IN CONSIDERATION OF** the payment by the City to the Owner of the Purchase Price and subject to the terms and conditions of this Agreement, the Owner and the City agree as follows:

**1. PURCHASE AND CONVEYANCE**

- 1.1 The City shall purchase the ROW from the Owner and the Owner shall sell the ROW to the City for a purchase price of (\$ ) (exclusive of GST) (the "Purchase Price") and upon the terms and conditions contained herein. The Purchase Price shall be paid to the Owner by the City on the Closing Date.
- 1.2 For clarification, the Purchase Price is based on a rate set at fifty percent (50%) of the Arterial Road Assessment Land Dedication Rates in effect at the effective date of this Agreement, as calculated on Schedule "C" attached hereto.

1.3 Subject to Article 3, the conveyance provided for in this Agreement shall be completed on \_\_\_\_\_, or such other date as the parties shall mutually agree to in writing, (the “Closing Date”).

1.4 Notwithstanding the above, and with the agreement of the Owner, the payment for the ROW may be:

(a) Deferred with security for the payment to be provided by the City to the Owner,  
or

(b) By way of land exchange for land of equal or greater size.

## **2. POSSESSION, ADJUSTMENTS AND GST**

2.1 The Owner shall provide vacant possession of the ROW to the City on the Closing Date.

2.2 The Owner shall pay and discharge all outgoings, including taxes, rates, levies, charges, local improvement charges (including any amortized local improvement charges), assessments, and any other impositions whatsoever rated, charged, assessed or imposed by any legislature or local authority, or otherwise howsoever on or with respect to the ROW as at the Closing Date, and all matters and items normally adjusted on a sale of real property, including utilities, shall be adjusted as between the City and the Owner as of the Closing Date.

2.3 Notwithstanding any provision contained in this Agreement, it is expressly agreed to by the City that all taxes and assessments in the nature of sales taxes, goods and services taxes or value added taxes (the “GST”) which may be charged, levied or assessed as a result of the City’s purchase of the ROW shall be paid by the City. The City hereby warrants to the Owner that it is a registrant under the Goods and Services Tax provisions of the *Excise Tax Act* and has been assigned registration number 119326270RT0001. As the City is a registrant, and has the obligation to pay the GST directly to the relevant taxing authority, the City shall indemnify and save harmless the Owner from any claims, liabilities or damages which the Owner may incur in regards to the payment by the City of the GST.

2.4 The Owner represents and warrants to the City that the Owner is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the *Income Tax Act* (Canada).

## **3. TRANSFER**

3.1 The Owner shall on the Closing Date transfer the title to the ROW to the City, free and clear of all liens, encumbrances, charges and instruments except as set out on Schedule “D” attached hereto,

and such other liens, encumbrances, charges and instruments as may have been made or suffered by the City.

3.2 The Owner shall provide to the City a registrable transfer of land for the ROW prior to the Closing Date, which transfer shall be prepared at the expense of the City and registered at the expense of the City.

3.3 Notwithstanding the above, the transfer of title to the ROW shall not delay registration of the Owner's subdivision plan.

3.4 If the City's acquisition of the ROW is not complete prior to registration of the subdivision plan, the City shall be entitled to register a caveat under the Land Titles Act in respect of this Agreement against the Certificate of Title protecting the City's interest in:

- (a) The ROW if the ROW has been created as a separate parcel; or
- (b) The Land containing the ROW if the ROW has not be created as a separate parcel.

#### **4. CONDITION OF ROW**

4.1 Notwithstanding any term or condition in this Agreement, the City shall acquire the ROW on the understanding and agreement that:

- (a) there are no agreements, conditions, warranties or representations relating to the ROW, other than as stated in this Agreement;
- (b) except as provided in this Agreement, the Owner does not warrant the quality, condition or sufficiency of the ROW for any use or purpose;
- (c) the ROW is being sold to the City on a strictly "as is, where is" basis and the City shall acquire the ROW at its own risk, with all faults and imperfections whatsoever, other than as stated in this Agreement; and
- (d) the City shall satisfy itself as to the condition of the ROW and the fitness for its intended use.

4.2 The Owner warrants to the City, that to its knowledge, without any investigation or review, the Owner, its employees, contractors or agents have not deposited, placed or brought onto the ROW any hazardous substances, nor to the its knowledge, without any investigation or review, is the Owner aware of the existence of any hazardous substances in, on or under the ROW.

For the purposes of this Agreement, the term "hazardous substances" includes but is not limited to, biological materials and agents (whether hazardous, in fact, or not), petroleum products and byproducts, 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.

## **8. STATUTORY NON-WAIVER**

8.1 Notwithstanding any other provision contained in this Agreement, it is expressly understood and agreed between the Owner and the City that the City, in entering into this Agreement, is doing so in its capacity as a purchaser 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 Agreement 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. 2000 Ch. M26, 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 Agreement, and nothing in this Agreement 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.

## **9. ADDRESS FOR NOTICE**

9.1 Any notices under this Agreement given to the parties hereunder shall be conclusively deemed to be sufficiently given if personally delivered, sent by prepaid registered mail addressed as follows, or transmitted by facsimile to the number of the party to whom it is intended as follows:

(a) to the City at:

Manager, Real Estate  
Financial and Corporate Services  
10<sup>th</sup> Floor, Edmonton Tower  
10111 – 104 Avenue N.W.  
Edmonton, Alberta T5J 0J4  
Facsimile: 780-496-6145 or 780-496-6189

(b) to the Owner at:

or to any other address as may be designated in writing by the parties. Notice given by registered mail, if posted in Alberta, shall conclusively be deemed to have been received on the fifth business day following the date on which such notice is mailed. In the event of a postal strike, notice may only be given by personal delivery. Any notice sent by facsimile before 4:30



p.m. local time on a business day shall be deemed to have been received when the sender receives the answer-back confirming receipt by the recipient; provided, however, that any facsimile received after 4:30 p.m. local time on a business day or received on a day other than a business day shall be deemed to have been received on the next business day.

## **10. GENERAL**

10.1 Time is to be considered of the essence of this Agreement.

10.2 The City shall have the right to protect its rights under this Agreement by registering a caveat against the title to the ROW or Lands, as the case may be.

10.3 The terms, conditions and covenants herein contained shall continue beyond the Closing Date, and accordingly they shall not merge with the transfer of the ROW.

10.4 Each of the parties hereto covenants and agrees with the other that each will, from time to time and at all times hereafter, make, do and execute or cause or procure to be made, done or executed such further acts, deeds and assurances as may be necessary for the more effectually carrying into effect this Agreement.

10.5 The waiver of any covenant, condition or provision hereof must be in writing.

10.6 This Agreement is the entire agreement between the parties with regard to the matters dealt with in it, and there are no understandings or agreements, representations, warranties, conditions or collateral terms, verbal or otherwise, existing between the parties except as expressly set out in this Agreement. The consideration stated herein is the sole consideration and inducement for the execution of this Agreement.

10.7 Should any provision of this Agreement be void, voidable or unenforceable for any reason whatsoever, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and be binding as though the said provision had not been included.

10.8 This Agreement shall be construed and governed by the laws of the Province of Alberta.

10.9 The reference to any legislation in this Agreement shall be deemed to include all amendments thereto and all regulations thereunder and all statutes, including all amendments thereto and regulations thereunder, that may be substituted for that legislation.

10.10 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, including successors in title, and assigns.

10.11 This Agreement shall not be assigned by the Owner without the prior written consent of the City, which consent may be arbitrarily withheld.

10.12 In this Agreement:

- (a) the word “shall” is to be read and interpreted as mandatory;
- (b) the word “may” is to be read and interpreted as permissive; and
- (c) the word “Owner” shall be read and interpreted as meaning an individual, a partnership, a corporation, a trust, an unincorporated organization, a government, or any department or agency thereof, and the heirs, executors, administrators or other legal representatives of any individual, and shall be read and interpreted as in the plural instead of the singular number if there is more than one party named, and in such case, the terms and conditions of this Agreement shall bind those parties individually as well as jointly.

10.13 The City is a licensed Real Estate Brokerage in the Province of Alberta.

10.14 This Agreement may be executed in counterpart and either by electronic or facsimile transmission.

THE CITY AND THE OWNER HAVE EXECUTED THIS AGREEMENT ON  
THE \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

APPROVED:

THE CITY OF EDMONTON, as  
Represented by the Director of Property  
Sales and Acquisitions, Real Estate,  
Financial  
and Corporate Services

AS TO FORM:

AS TO CONTENT:

Per:

(Seal)

WITNESS

Per:

Name:

(Seal)

Title:

I have the authority to bind the corporation.