

Memorandum of Understanding (MOU)

Effective as of the 7th day of March 2016

Between

THE LETHBRIDGE ECONOMIC DEVELOPMENT INITIATIVE SOCIETY
Operating as Economic Development Lethbridge
(hereinafter called "EDL")

And

THE CITY OF LETHBRIDGE
(hereinafter called "City")

The Lethbridge Economic Development Initiative Society was established by City Council resolution on June 17, 2002, was registered as a Society under the Societies Act in 2003, and operates as Economic Development Lethbridge ("EDL"). It is an independent organization that operates at arms-length from the City of Lethbridge.

EDL has the following Mission Statement: To strengthen and develop the Lethbridge economy by initiating and facilitating proactive economic development strategies and promoting Lethbridge as an excellent place to live, learn, invest, visit and do business.

Pursuant to its Mission, the EDL provides information and service to those interested in investing in Lethbridge, and facilitates investment and development in Lethbridge, so as to encourage economic growth in Lethbridge.

The City requires the delivery of economic development programs and services for Lethbridge. To that end, the City provides funding to EDL so that it may engage in and provide specific projects and initiatives, as strategically defined by the EDL Board of Directors, based on the economic opportunities and needs of Lethbridge.

In the consideration of the terms and conditions set out in this Agreement, EDL and the City agree as follows:

GENERAL

Both Parties acknowledge that economic development by its nature is an opportunistic discipline, requiring flexibility and adaptability to respond to rapidly changing market conditions. EDL and the City are conscious of EDL's need to achieve strategic objectives while also responding to the unanticipated economic development challenges and opportunities that may impact the community of Lethbridge.

In the interests of business development, the City and EDL may share information with each other, however only to the extent that such sharing of information would be allowed pursuant to the City and EDL's confidentiality policies and/or agreements, and the Freedom of Information and Protection of Privacy Act.

ROLES AND RESPONSIBILITIES

EDL shall:

1. Be responsible for the initiation, coordination, and implementation of economic development programs in general for Lethbridge.
2. Strengthen and develop the Lethbridge economy by initiating and facilitating proactive economic development strategies and promoting Lethbridge as an excellent place to live, learn, invest, visit and do business.
3. Provide information and services to those interested in investing in Lethbridge and facilitate investment and development in Lethbridge, so as to encourage economic growth in Lethbridge.
4. Make recommendations to City Council on economic development matters or issues that may impact the community of Lethbridge.
5. Set its strategic direction through a Four Year Business Plan aligned with the municipal funding cycles.
6. The Four Year Business Plan shall contain, at a minimum, EDL's list of priorities, their long-term goals and strategic plan.
7. Prior to end of the City's budget cycle, EDL shall submit to City Council, for their consideration during their budget deliberations, their Four Year Business Plan and make a request for funding support for the next four (4) calendar years.
8. Submit to the City Manager's Designate, at the beginning of the year, a detailed Annual Business Plan based on the Four Year Business Plan, and a report regarding the previous year's plan.
9. Submit to the City Manager's Designate, annually, an Audited Annual Financial Statement and a Summary of Results Report, regarding the previous calendar year, no later than May 31 of each year.
10. Review their policies, strategic plan and governance documents at reasonable intervals. Any changes EDL makes to said documents that impact the Mission of EDL and/or impact the City, should be discussed with the City and agreed upon before being implemented.
11. Operate pursuant to a Board of Directors Policy Manual that shall contain current operating practices.
12. Ensure it has required Bylaws in place.
13. Promptly advise the City of any matters which may materially affect this Agreement.

CITY shall:

1. Advise EDL of any inquiries or potential proposals that impact economic development in Lethbridge for EDL's review and comment, but only to the extent permitted under the City and EDL's confidentiality policies and/or agreements, and the Freedom of Information and Protection of Privacy Act.
2. Participate on the EDL Board. The Mayor and City Manager of the City shall be appointed permanently to the Board. In addition, the City shall appoint one Councillor to the Board, and shall ratify the appointment of four community members to the Board who represent: the interests of Aboriginal persons, the Environment, the principle of Multi-Culturalism and the interests of Seniors.
3. Promptly advise EDL of any matters which may materially affect this Agreement.
4. Through City Administration, and within Council Guidelines, cooperate with EDL by providing EDL with information and assistance wherever possible.

FUNDING

Subject to satisfactory compliance with the obligations set out in this MOU, the City shall provide funding support to EDL as approved in the budget.

While primary funding for EDL is provided by the City, EDL shall identify, evaluate, and solicit all possible funding sources at the corporate, Federal, Provincial and local levels.

The City shall remit payment annually, with each annual payment being made by way of four equal quarterly installments, payable on January 1st, April 1st, July 1st, and October 1st during each year. In the event that any of these dates are not business days, payment shall be made on the last business day immediately prior to these dates.

TERMINATION

Either party may terminate this MOU without cause by giving the other party at least ONE HUNDRED AND EIGHTY (180) DAYS written notice advising of the effective termination date. Upon such termination, the City, in consultation with EDL, shall determine what amount, if any, is payable to EDL or refundable to the City for services satisfactorily rendered pursuant to this MOU prior to and up to the termination date. If required by the City, EDL shall prepare a report as to the services rendered to the effective date of such termination.

City may terminate the MOU immediately, in writing, in the following circumstances:

- a. In the event EDL fails to maintain its Society status pursuant to the provisions of the Societies Act;
- b. In the event EDL fails to perform the duties and obligations which it has undertaken in this MOU, including failure to complete the services detailed in the Annual Business Plans submitted to Council;
- c. In the event EDL discontinues or is about to discontinue the Services under this MOU.
- d. In the event EDL is dissolved, amalgamated or merged with another society or becomes bankrupt.

Upon such termination, the City, in consultation with EDL, shall determine what amount, if any, is payable to EDL or refundable to the City for services satisfactorily rendered pursuant to this MOU prior to and up to the termination date. If required by the City, EDL shall prepare a report as to the Services rendered to the effective date of such termination.

In the event that EDL, in the opinion of the City, is not satisfactorily complying with the duties and obligations as set out in this MOU, this shall be deemed a breach of the MOU. The City will provide notice to EDL of the details of the breach of the MOU and will allow EDL 60 days to rectify the breach. Failure to rectify the breach within 60 days will result in immediate Termination of the MOU pursuant to the MOU article entitled "Termination".

MEDIATION AND ARBITRATION

- a. The parties agree to attempt to negotiate a resolution of any disputes arising in connection with this MOU prior to referring the matter to arbitration or other legal process. In the event

of a dispute between the City and EDL, a representative from each party shall attempt to cooperatively and with due diligence resolve the issue. If either one of the parties believes that they are unable to resolve the dispute in a timely manner, they shall promptly escalate the matter to the senior executives of each party. In the event of such escalation, the executives shall promptly review and attempt cooperatively and with due diligence to resolve the issue.

- b. If the executives are unable to resolve the dispute within fifteen (15) business days after referral, the parties will submit the dispute to a jointly appointed, external mediator for a non-binding resolution. Mediation will terminate when: the dispute is resolved, one of the parties wishes to terminate the mediation prior to resolution (mediation will be deemed to have failed), or the mediator files a report stating there is no possibility of resolution (mediation will be deemed to have failed).
- c. Where mediation has been deemed to have failed, the parties will, within five (5) business days of the failure date, submit the dispute to an arbitrator in accordance with the procedures set out in this section.
- d. In accordance with this section, either party may, by written notice to the other, submit a dispute, claim, question or difference to be finally settled by arbitration in accordance with the provisions of the *Arbitration Act* (Alberta) and any amendments thereto.
- e. The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the parties, or in the event of failure to agree within 10 business days, any party may apply to any court having jurisdiction to appoint an arbitrator. The arbitrator shall be qualified by education and training to act as arbitrator for the particular matter to be decided.
- f. The arbitrator shall be instructed that time is of the essence in proceeding with his or her determination of any dispute, claim, question or difference and, in any event, the arbitration award must be rendered within 30 days of the submission of such dispute to arbitration.
- g. The arbitration shall take place in Lethbridge, Alberta.
- h. The arbitration award shall be given in writing and shall be final and binding on the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto.
- i. Judgement upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.

INDEMNIFICATION

The EDL shall indemnify, defend, pay on behalf of and hold harmless the City, its officers, officials, agents, representatives, employees and volunteers from and against all losses, claims, demands, costs (including solicitor/client costs) damages, actions, suits, or proceedings arising, directly or indirectly, out of or in connection with the activities, services or performances under this Agreement of the EDL. The liability of the EDL shall survive the termination of this agreement.

The City shall indemnify, defend, pay on behalf of and hold harmless the EDL, its officers,

officials, agents, representatives, employees and volunteers from and against all losses, claims, demands, costs (including solicitor/client costs) damages, actions, suits, or proceedings arising, directly or indirectly, out of or in connection with the City's activities, services or performances under this Agreement. The liability of the City shall survive the termination of this agreement.

INSURANCE

Economic Development Lethbridge shall procure, maintain, keep in force for the duration of the MOU and pay for the coverage listed in this article, unless otherwise stipulated, in a form acceptable to the City with Insurer(s) licensed in Alberta.

1. Minimum Scope of Coverage To be Supplied

- a. Commercial General Liability Insurance:** Occurrence Form coverage as respects liability arising out of activities performed by or on behalf of EDL including Non-Owned Automobile Liability, Broad Form Property Damage Liability, Tenants All Risk Legal Liability, Products and Completed Operations Liability, Contingent Employer Liability, and Blanket Contractual Liability with respect to the Services Under this MOU.
- b. Workers' Compensation Insurance/Assessments:** To protect the Contractor/Supplier and the City from claims arising from injury to workers and Employment Insurance Assessments in accordance with the requirements of the Alberta Workers Compensation Act. If the Contractor/Supplier is in an exempt industry or does not qualify for Workers' Compensation coverage in Alberta, the Contractor/Supplier must provide an Employer's Liability Extension Endorsement to their Commercial General Liability policy.

2. Minimum Limits of Insurance

Economic Development Lethbridge shall maintain limits no less than:

- a. Commercial General Liability:** \$2,000,000 combined single limit per occurrence for personal injury (including bodily injury and/or death) sustained by any person or persons and damage to property. EDL shall be responsible for all costs within the deductible level under their policy coverage and any such amount shall not be more than \$10,000 with respect to each claim, unless specifically agreed to by the City.

3. Other Insurance Provisions

The policies are to contain or be endorsed to contain, the following General Liability Policy extensions:

The City shall be added as Additional Insured as respects liability arising out of activities performed by or on behalf of EDL and the coverage shall contain no special limitations on the scope of protection afforded to the City.

The coverage shall include a **Cross Liability** or Severability of Interest wording to the effect that the coverage shall apply to each Insured in the same manner as if separate policies had been issued to each. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City.

4. Cancellation of Insurance Coverage

Each insurance policy required by the clause shall be endorsed to state that each insurer will endeavor to provide the City with 30 days prior written notice of cancellation by registered mail.

5. Verification of Coverage

EDL shall furnish the City with a **Certificate of Insurance** and **original endorsements** effecting coverage required by this clause. Said documents are to be signed by a licensed Insurance Broker. All certificates and endorsements are to be received and approved by the City before the MOU commences.

6. Representation

The City does not make any representation or warranty with respect to the extent or adequacy of the insurance protection as noted in the foregoing.

7. Obligations

The furnishing of this insurance shall not limit any of the obligations or liabilities expressed elsewhere in the MOU documents.

8. Contractor/Suppliers and SubContractor/Suppliers

EDL should request proof of insurance for all Contractors/Suppliers and Sub-Contractors/Suppliers hired by EDL.

NOTICE

Notice may be given to EDL by personal delivery or registered mail to:

Economic Development Lethbridge
308 Stafford Drive South
Lethbridge, AB T1J 2L1

Attention: Chief Executive Officer

Or to the City by personal delivery or registered mail to:

City of Lethbridge
910 - 4th Avenue South
LETHBRIDGE, Alberta T1J 0P6

Attention: Real Estate and Economic Development Customer Liaison

LIQUIDATION OR WINDING UP

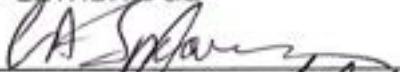
In the event of the liquidation, dissolution or winding up of EDL, all assets of EDL shall be transferred to the City.

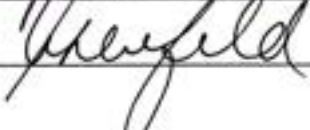
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP)

The parties acknowledge the *Freedom of Information and Protection of Privacy Act* R.S.A. 2000 c.F-25 (the Act) as amended from time to time, and shall abide by the requirements of the Act. Not limiting the generality of the foregoing, the parties specifically acknowledge that the terms of this MOU may be subject to disclosure under the Act.

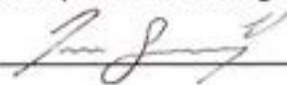
IN WITNESS WHEREOF the parties to the MOU have caused to be affixed their respective corporate seals attested by the signature of their respective duly authorized signing officers as of the day and year first above written.

CITY OF LETHBRIDGE





LETHBRIDGE ECONOMIC DEVELOPMENT INITIATIVE SOCIETY (operating as Economic Development Lethbridge (EDL))

 T. LEWINGTON CEO

