

REAL PROPERTY PURCHASE AGREEMENT

THIS REAL PROPERTY PURCHASE AGREEMENT (the “**Agreement**”) is made and executed effective as of the ___ day of September, 2019 (the “**Effective Date**”), by and between JTL Group, Inc., a Montana corporation doing business as Knife River (“**Knife River**”), and the City of Billings, a municipal corporation organized in the State of Montana (the “**City**”).

RECITALS

A. Knife River is the owner of certain land located in Yellowstone County, Montana consisting of approximately 300.84 acres as legally described on the attached **Exhibit A-1** and depicted with the marked areas on the maps attached hereto as **Exhibit A-2** (the “**Property**”).

B. Knife River and City desire to sell and convey from Knife River to City all of Knife River’s interests in the Property in accordance with the terms and conditions of this Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing promises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Sale of Property / Purchase Price.** Knife River agrees to sell to City, and City agrees to buy from Knife River, the Property for the sum of Eight Thousand Dollars (\$8,000) per acre for a total sum of Two Million Four Hundred Six Thousand Seven Hundred Twenty Dollars (\$2,406,720) (the “**Purchase Price**”). The Purchase Price shall be adjusted to reflect actual acreage if the Re-Plat results in the Property being comprised of more or less than 300.84 acres.

- a. **Title, Form of Deed.** The Property will be conveyed to City by a special warranty deed free and clear of any liens or encumbrances created by or arising through Knife River (the “**Deed**”). At Closing Knife River shall deliver the Deed to City. Without limiting the generality of the foregoing, the parties acknowledge and agree that Knife River shall not be obligated to remedy or remove defects or encumbrances affecting the Property, and that its failure to remedy or remove those defects and encumbrances included within the foregoing warranty concerning liens or encumbrances created by or arising through Knife River will only entitle City to terminate the Agreement.
- b. **Purchase Price.** City shall pay the Purchase Price to Knife River in US Dollars by wire transfer at Closing.
- c. **Excluded Property.** The Property to be conveyed pursuant to this Agreement shall not include Knife River’s personal property currently on the Property and Knife River shall retain ownership of all such personal property, including but not limited to, the fencing, transformers, and pumps (the “**Excluded Property**”). Knife River shall remove all Excluded Property no later than 180 days after Closing at Knife River’s sole cost and expense.

2. **Diligence and Inspection.** City and its agents and representatives shall have a period of thirty (30) days after the Effective Date (the “**Inspection Period**”) to review and inspect or cause to be reviewed and inspected all aspects of the Property Information (as defined herein) which City in its sole and absolute discretion deems necessary or advisable to determine the Property’s suitability for City’s intended use and operation thereof. If City is not satisfied in its sole and absolute discretion with the results of such review and inspections, City may terminate this Agreement by sending written notice to Knife River on or before expiration date of the Inspection Period upon which both City and Knife River shall be relieved of any further obligations under this Agreement except for those that specifically survive termination hereunder.

Knife River shall, within ten (10) days after the Effective Date, deliver to City the following information regarding the Property to the extent such information is in the possession and control of Knife River: permits, title information, and environmental assessments (collectively, the “**Property Information**”).

Access to the Property and such other additional information pertinent to the Property as City may reasonably request shall be granted to City and its representatives and agents by Knife River following reasonable notice and approval from Knife River and during normal business hours; physical access to the Property for inspection by City will be allowed upon mutual agreement by City and Knife River. Inspections shall be at City’s sole cost. City shall keep the Property free and clear of any liens and will indemnify, defend and hold Knife River harmless from all liens, claims and liabilities asserted against Knife River or the Property as a result of any such entry or inspections by City or its agents, employees, or representatives. If any inspection or test causes damage to the Property, City shall restore the damaged area to the same condition it was in prior to the inspection or test. The City hereby agrees to indemnify, defend and hold Knife River harmless from all damages, claims, costs, liabilities, judgments or expenses resulting from the inspections of the Property by City and its agents. Notwithstanding any of the foregoing, the City may not perform any physical or invasive testing of the Property, including without limitation any so-called “Phase II” assessment or testing, without the prior written consent of Knife River, which consent may be given or withheld at Knife River’s sole discretion. The obligations of City under this Section 2 shall survive termination of this Agreement.

3. **Covenants.** The Parties hereby agree as follows:

a. City shall obtain and maintain a Storm Water Pollution Prevention Plan at all times during any construction, excavation, or fill activity on the Property or Knife River’s adjacent property. Knife River’s adjacent property is depicted on the attached **Exhibit B** and hereafter the “**Adjacent Property**”.

b. City shall replat the Property, at City’s sole cost and expense, to match the legal descriptions and map as depicted on the attached **Exhibit C** (the “**Re-Plat**”).

c. City shall make available to Knife River all water and sanitary sewer city services at the Adjacent Property.

d. City shall waive all applicable fees for Knife River’s connection to the City waterline and the system development fees to connect to the hydrant line for Knife River’s Adjacent Property at the Southwest corner of the roundabout and Shiloh Road. This fee waiver shall include the hydrant line to Shiloh.

e. City will diligently assist Knife River in obtaining a full release of Knife River's reclamation permit and a reclamation release from the Property. To the extent Knife River's reclamation obligations are not fully released prior to Closing, City hereby assumes all such reclamation obligations and will complete the same in a timely and diligent manner at City's sole cost and expense until Knife River obtains a full reclamation release.

f. City shall haul, place, grade, compact, and seed approximately 1,500,000 cubic yards of material from the Property onto the Adjacent Property in a compacted (95% density) condition to bring the Adjacent Property to grade with Hesper and Shiloh roads (the "**Fill Project**") in accordance with the following requirements:

(i) The actual amount of material to be hauled, placed, graded, compacted, and seeded to complete the Fill Project shall be in accordance with Knife River's Fill Project plans and as reasonably determined by Knife River provided that in no event shall City's obligations to complete the Fill Project exceed the volume of materials excavated by City or its contractors or agents on the Property.

(ii) City shall be responsible for all costs and expenses in connection with hauling, placing, grading, compacting, and seeding the fill material on Knife River's property.

(iii) City shall pay Knife River a dumping fee of One Dollar (\$1.00) per cubic yard of material placed on Knife River's property pursuant to this Agreement. City shall pay Knife River the dumping fee on a monthly basis, based on City's good faith estimates of quantities placed. The final fill quantities and dumping fees payable from City to Knife River shall be trued up upon completion of the Fill Project pursuant to a topographical survey of in place fill material to be completed by City at City's sole cost and expense. City shall complete a baseline topographical survey, at City's sole cost and expense, prior to commencement of the Fill Project.

(iv) City shall complete the Fill Project no later than the earlier of: (x) one year after City's commencement of construction or excavation work on the Property, and (y) three years after Closing. City is required to place all earthen materials removed from the Property onto the Adjacent Property, until the Fill Project is complete, and City shall not be permitted to sell or otherwise haul such material to any alternate location or party without obtaining Knife River's prior written consent which may be withheld in Knife River's sole discretion.

(v) City and its contractor(s) and agent(s) shall complete the Fill Project and associated work in a safe, competent, workmanlike and environmentally responsible manner, in accordance with all applicable laws, and utilizing reasonable care and skill in accordance and consistent with industry standards and good construction practice as applicable.

(vi) City shall fully protect, defend, indemnify, save and hold harmless Knife River, its officers, agents, employees, parent, divisions, subsidiaries and affiliate companies (collectively the "**Indemnitees**"), from every kind and character of damages, liabilities, losses, expenses, demands, claims, causes of action and costs (including reasonable attorney's fees) of any and every nature whatsoever (including without limitation, claims for pollution and environmental damage) asserted against the Indemnitees by third parties, to the extent arising from or caused by the negligent acts or omissions of City, its contractors, or those for which it is legally responsible, or from a breach of the Agreement. To the fullest extent allowed by law, City further agrees to fully

protect, defend, indemnify, save and hold harmless the Indemnitees from and against any claim by any employee of City, contractor or any third party, based on the failure of the Indemnitees to provide a safe place to work or correct an unsafe condition at a work location to the extent the condition found to be unsafe was observed by City or its employees or should have been observed by them upon a reasonably careful inspection of the work location.

(vii) At all times commencing on the date of this Agreement, and continuing until completion of the Fill Project, City and its contractor(s) and agents(s) doing work on the Fill Project or accessing the Adjacent Property shall comply with and maintain in full force the insurance policies and additional requirements set forth on the attached **Exhibit D**.

4. **Conditions to Closing.** The obligations of City under this Agreement are contingent upon each of the following:

- a. **Representations and Warranties.** All of the representations and warranties of Knife River contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date.
- b. **Title.** Title to the Property shall have been found acceptable by City, or been made acceptable, in each case in accordance with the requirements and terms of this Agreement.
- c. **Performance of Knife River's Obligations.** Knife River shall have performed all of the obligations required to be performed by Knife River under this Agreement, as and when required by this Agreement.
- d. **Expiration or Waiver of Inspection Period.** The Inspection Period shall have expired without City terminating this Agreement in accordance with Section 2, or City shall have waived the Inspection Period.
- e. **Failure of Condition.** In the event of the failure of any condition precedent set forth above, City, at its sole election, may (i) terminate this Agreement by notice in writing delivered to Knife River on or before the Closing Date; (ii) waive the condition and proceed to Closing; or (ii) if such failure arises from Knife River's breach of this Agreement, avail itself of any remedies provided herein.

The obligations of Knife River under this Agreement are contingent upon each of the following:

- a. **Representations and Warranties.** The representations and warranties of City contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date.
- b. **Performance of City's Obligations.** City shall have performed all of the obligations required to be performed by City under this Agreement, as and when required by this Agreement.
- c. **Re-Plat.** The Re-Plat shall be finally approved, recorded, and effective.

- d. Failure of Condition. In the event of the failure of any condition precedent set forth above, Knife River, at its sole election, may (i) terminate this Agreement by notice in writing delivered to City on or before the Closing Date; (ii) waive the condition and proceed to Closing; or (iii) if such failure arises from City's breach of this Agreement, avail itself of any remedies provided herein.

5. Closing. The closing of the purchase and sale contemplated by this Agreement (the "**Closing**") shall occur on a date and time selected by Knife River and City provided that Closing shall occur on or before November 15, 2019 (the "**Closing Date**"). The Closing shall be conducted at the offices of First Montana Title Company of Billings ("**Title**"), or at another mutually agreed upon location, or in accordance with escrow instructions provided by the parties. Knife River shall deliver possession of the Property to City on the Closing Date.

- a. Knife River's Closing Documents. On the Closing Date, Knife River shall execute and deliver to City the following (collectively, "**Knife River's Closing Documents**"):

- (i) Special Warranty Deed. The Deed, in a form acceptable to Knife River and City, conveying the Property to City by Knife River subject to the Permitted Encumbrances. Without limiting the generality of the foregoing, the parties acknowledge and agree that Knife River shall not be obligated to remedy or remove defects or encumbrances affecting the Property.
- (ii) Title Documents. Such affidavits or other documents as may be reasonably required by Title in order to record the Closing Documents and issue an owner's policy in favor of City containing no exceptions other than the Permitted Encumbrances.
- (iii) Other Documents. All other documents required by law or as may be reasonably required by Title to transfer and effect the sale of the Property, consistent with the terms and provisions of this Agreement.

- b. City's Closing Documents. On the Closing Date, City will execute as applicable, and deliver to Knife River the following (collectively, "**City's Closing Documents**"):

- (i) Purchase Price. The wired funds of the Purchase Price as provided in Section 1(b).
- (ii) Title Documents. Such affidavits or other documents as may be reasonably required by Title in order to record the Closing Documents and issue an owner's policy in favor of City.
- (iii) Other Documents. All other documents as reasonably required by Title to effect the transfer and sale of the Property.

6. Allocation of Closing Costs. Knife River and City agree to the following allocation of costs regarding this Agreement:

- a. Title Insurance, Closing Fee. Knife River will pay all costs of the Title Commitment, and the City shall pay all premiums and other costs of any title insurance policy obtained by City or its lender. The fees charged by Title for closing shall be paid one-half by Knife River and one-half by City.
 - b. Real Estate Taxes and Special Assessments. General real estate taxes and installments of special assessments certified and payable therewith prior to the year in which the Closing occurs and all prior years will be paid by Knife River. General real estate taxes and installments of special assessments certified and payable therewith in the year Closing occurs will be prorated and paid by Knife River and City as of the Closing Date based upon a calendar year. City shall pay all general real estate taxes and special assessments in all years after the Closing.
 - c. Recording Costs. City will pay the cost of recording the Deed and any mortgages or other documents pertaining to its financing. Knife River will pay the cost of recording any documents necessary to remove any lien which is not a Permitted Encumbrance.
 - d. Utility Expenses. Utility expenses will be prorated as of the Closing Date. Knife River will pay the cost of utility expenses prior to the Closing Date including any delinquent utility costs. City will pay the cost of all utility expenses for the Property as of the Closing Date and subsequent to the Closing Date.
7. **Title Examination.** Title examination will be conducted as follows:
- a. Knife River's Title Evidence. Within ten (10) business days after the Re-Plat is complete, Knife River shall furnish a commitment for an owner's policy of title insurance to be issued at Closing (or as soon as possible thereafter) in the amount of the total Purchase Price, which commitment shall be issued by Title, (the "**Title Commitment**"). Together with the Title Commitment, Title shall deliver to City complete, legible copies of all documents recorded in the chain of title which are disclosed by Title as exceptions to title.
 - b. City's Objections. If written objection to the form or content of the Title Commitment or the status or condition of title is made by City and delivered to Knife River within five (5) business days after receipt of the Title Commitment and complete legible copies of all exception documents (the "**Title Objection Period**"), then timely objection to title (collectively, the "**Objections**") shall have been made. In the event of Objections, Knife River will have until the Closing Date to cure the Objections. If the Objections are not cured on or before the Closing Date, City will have the option to do either of the following: (i) terminate this Agreement, or (ii) waive the Objections and proceed to Closing and such Objections shall become Permitted Encumbrances; provided that City shall have the option, at Closing, to pay directly any liens, mortgages, or judgments against the Property created by or through Knife River that are liquidated in amount and to which an Objection has been made by City, and City may deduct the amount so paid from the Purchase Price. Notwithstanding anything herein to the contrary, in

no event shall City's title review hereunder extend the Closing Date. Any matter shown on the Title Commitment and not so objected to by City shall be deemed a "Permitted Encumbrance" under this Agreement.

8. **Representations and Warranties by Knife River.** Knife River represents and warrants to City on the date hereof as follows:

- a. **Authority.** Knife River is duly organized and is in good standing under the laws of the State of Montana; Knife River has the requisite power and authority to enter into and perform this Agreement and those Knife River's Closing Documents signed by it; such documents have been duly authorized by all necessary corporate action on the part of Knife River and have been duly executed and delivered; such execution, delivery and performance by Knife River of such documents does not conflict with or result in a violation of Knife River's organizational documents, or any judgment, order, or decree of any court or arbiter to which Knife River is a party or require any consent or approval of any court, governmental authority or other person; such documents are valid and binding obligations of Knife River, and are enforceable in accordance with their terms.
- b. **Rights of Others to Purchase the Property.** Knife River has not entered into any other contracts for the sale of the Property, nor, to Knife River's knowledge, are there any rights of first refusal or options to purchase the Property or any other rights of others that might prevent the consummation of this Agreement.
- c. **FIRPTA.** Knife River is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.
- d. **Litigation.** To Knife River's knowledge, there are no actions, suits, arbitrations, governmental investigations or other proceedings of any kind pending or, to Knife River's knowledge, threatened against Knife River or affecting the Property before any court, governmental authority or other entity that would prevent Knife River's sale of the Property to City as provided in this Agreement.
- e. **Notice of Violations.** Knife River has not received any notice from any governmental authority to the effect that either Knife River or the Property does not comply with any laws as they affect the Property and its use.
- f. **Construction Liens.** No materials have been delivered nor any work or labor performed on the Property under contracts with or on behalf of Knife River which have not been fully paid for, and no person or entity presently has any lien, or right of lien, against the Property for labor or materials.

9. **Representations and Warranties by City.** City represents and warrants to Knife River that City has the requisite power and authority to enter into this Agreement and the related documents signed by it; such documents have been duly authorized by all necessary action on the part of City and have been duly executed and delivered; that the execution, delivery and performance by City of such documents do not conflict with or result in violation of, as applicable,

any judgment, order or decree of any court or arbiter to which the City is a party; such documents are valid and binding obligations of City, and are enforceable in accordance with their terms.

10. As-Is; Acceptance of Property. CITY AND KNIFE RIVER UNDERSTAND, ACKNOWLEDGE AND AGREE THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, CITY'S PURCHASE OF THE PROPERTY AND ANY OTHER RIGHTS AND INTERESTS TO BE CONVEYED, SOLD, TRANSFERRED AND/OR ASSIGNED PURSUANT TO THIS AGREEMENT SHALL BE ON AN "AS IS" "WHERE IS" BASIS AND CONDITION WITH ALL FAULTS, AND CITY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, KNIFE RIVER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, OR AS TO THE PHYSICAL MEASUREMENTS OR USABLE SPACE OF THE PREMISES, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY OR THE EXPENSES OR OPERATIONS OF THE PROPERTY, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH CITY MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, (H) THE EXISTENCE OR NONEXISTENCE OF ANY LATENT OR PATENT DEFECTS WITH RESPECT TO THE PROPERTY, (I) THE EXISTENCE OR NONEXISTENCE OR DISPOSAL OF HAZARDOUS SUBSTANCES OR POLLUTANTS AT, IN, ON, UNDER OR IN THE VICINITY OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY "HAZARDOUS SUBSTANCES" AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATIONS AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER (COLLECTIVELY, "CERCLA") AND ANY "SOLID WASTE" AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, (J) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING WITHOUT LIMITATION CERCLA ("ENVIRONMENTAL LAWS"), (K) TITLE TO THE PREMISES OR THE ASSIGNABILITY, ASSUMABILITY, TRANSFERABILITY OR VALIDITY OF ANY CONTRACTS, AGREEMENTS, FRANCHISES, LICENSES, PERMITS, GOVERNMENT APPROVALS, WARRANTIES OR GUARANTIES RELATING TO THE PREMISES OR THE USE AND OPERATION THEREOF; (L) COMPLIANCE OR NONCOMPLIANCE WITH LOCAL, STATE OR FEDERAL STATUTES, ORDINANCES, ORDERS, OR REGULATIONS CONCERNING THE PREMISES OR THE USE THEREOF; (M) PRIOR OR CURRENT OPERATIONS CONDUCTED ON THE PREMISES, OR (N) ANY OTHER MATTER OR THING WITH RESPECT TO, AFFECTING OR RELATING TO THE PROPERTY. CITY

FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, CITY IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY KNIFE RIVER OR ANY AFFILIATE OF KNIFE RIVER OR ANY AGENT, EMPLOYEE, SERVANT OR REPRESENTATIVE OF KNIFE RIVER OR ANY AFFILIATE OF KNIFE RIVER OR ANY BROKER OR ANY OTHER PERSON. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, KNIFE RIVER IS NOT AND SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATIONS THEREOF, FURNISHED BY KNIFE RIVER OR ANY AFFILIATE OF KNIFE RIVER OR ANY AGENT, EMPLOYEE, SERVANT OR REPRESENTATIVE OF KNIFE RIVER OR ANY AFFILIATE OF KNIFE RIVER OR ANY BROKER OR ANY OTHER PERSON.

11. Release. CITY HEREBY AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, AS OF THE CLOSING, AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, KNIFE RIVER AND EACH OF ITS DIRECTORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, ATTORNEYS, AFFILIATES AND RELATED ENTITIES, HEIRS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "RELEASEES") SHALL BE, AND ARE HEREBY, FULLY AND FOREVER RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITIES, INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES, LOSSES, CLAIMS (INCLUDING THIRD PARTY CLAIMS), DEMANDS, DAMAGES (OF ANY NATURE WHATSOEVER), CAUSES OF ACTION, COSTS, PENALTIES, FINES, JUDGMENTS, REASONABLE ATTORNEYS' FEES, CONSULTANTS' FEES AND COSTS AND EXPERTS' FEES (COLLECTIVELY, THE "CLAIMS") WITH RESPECT TO ANY AND ALL CLAIMS, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY BE CONNECTED WITH THE PROPERTY OR THE PHYSICAL, ENVIRONMENTAL AND STRUCTURAL CONDITION OF THE PREMISES OR ANY LAW OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR COST RECOVERY UNDER CERCLA OR ANY OTHER CLAIMS UNDER ANY ENVIRONMENTAL LAWS, AND ANY CLAIM OR MATTER (REGARDLESS OF WHEN IT FIRST APPEARED) RELATING TO OR ARISING FROM (I) ANY VIOLATION, NONCOMPLIANCE OR OBLIGATION TO COMPLY WITH ENVIRONMENTAL LAWS, THE PRESENCE OF ANY ENVIRONMENTAL PROBLEMS, OR THE USE, PRESENCE, STORAGE, RELEASE, DISCHARGE, OR MIGRATION OF HAZARDOUS MATERIALS ON, IN, UNDER OR AROUND THE PREMISES REGARDLESS OF WHEN SUCH HAZARDOUS MATERIALS WERE FIRST INTRODUCED IN, ON OR ABOUT THE PREMISES, (II) ANY PATENT OR LATENT DEFECTS OR DEFICIENCIES WITH RESPECT TO THE PROPERTY WHICH ARE UNKNOWN TO KNIFE RIVER, (III) ANY AND ALL MATTERS RELATED TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, THE CONDITION AND/OR OPERATION OF THE PROPERTY AND EACH PART THEREOF, AND (IV) THE PRESENCE, RELEASE AND/OR REMEDIATION OF ASBESTOS AND ASBESTOS CONTAINING MATERIALS IN, ON OR ABOUT THE PREMISES REGARDLESS OF WHEN SUCH ASBESTOS AND ASBESTOS CONTAINING MATERIALS WERE FIRST INTRODUCED IN, ON OR ABOUT THE PREMISES. CITY HEREBY WAIVES AND AGREES NOT TO COMMENCE ANY ACTION,

LEGAL PROCEEDING, CAUSE OF ACTION OR SUITS IN LAW OR EQUITY, OF WHATEVER KIND OR NATURE, DIRECTLY OR INDIRECTLY, AGAINST THE RELEASEES OR THEIR AGENTS IN CONNECTION WITH CLAIMS DESCRIBED ABOVE. THE RELEASE PROVIDED IN THIS SECTION SHALL SPECIFICALLY APPLY WHETHER OR NOT ANY OF THE FOREGOING IS ATTRIBUTABLE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF KNIFE RIVER OR ANY OTHER RELEASEE.

12. **Damage.** If, on or prior to the Closing Date, all or any part of the Property is substantially damaged by fire casualty, the elements or any other cause, Knife River shall immediately give notice to City of such fact and at City's option (to be exercised within fifteen (15) days after Knife River's notice), this Agreement shall terminate, in which event neither party will have any further obligations under this Agreement and both parties shall have no further duties and obligations hereunder.

13. **Condemnation.** If, on or prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Knife River shall immediately give notice to City of such fact and at City's option (to be exercised within fifteen (15) days after Knife River's notice), (i) City may proceed to purchase the Property (subject to the condemnation proceedings or, if such proceedings are completed prior to Closing, with an assignment from Knife River to City of all condemnation proceeds), or (ii) City may terminate this Agreement, in which event neither party will have further obligations under this Agreement.

14. **Assignment.** Neither City nor Knife River shall be permitted to assign its rights under this Agreement without obtaining the other party's prior written consent, which may be withheld in such party's sole and absolute discretion.

15. **Miscellaneous.**

- a. **Survival.** Except as specifically provided herein, all of the terms of this Agreement will survive and be enforceable after the Closing.
- b. **Notices.** Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to Knife River by delivering it personally to an officer of Knife River; or if it is directed to City, by delivering it personally to City; or if mailed in a sealed envelope by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile, copy followed by mailed notice as above required; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Knife River: JTL Group, Inc.
Attn: President
4014 Hesper Road
Billings, MT 59106

If to City: City of Billings
Attn: Mayor

210 North 27th St.
Billings, MT 59101

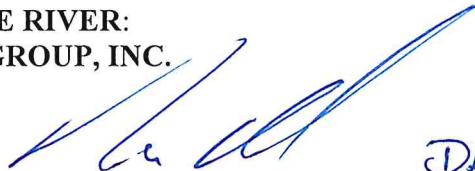
Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, five (5) days prior to the effective date of such change.

- c. Captions. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.
- d. Entire Agreement; Modification. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.
- e. Binding Effect. This Agreement binds and benefits the parties and their respective heirs, successors and permitted assigns.
- f. Time is of Essence. Time is of the essence in the payment and performance of the parties' covenants, agreements, duties and obligations hereunder.
- g. Controlling Law. This Agreement has been made under the laws of the State of Montana, and such laws will control its interpretation.
- h. Counterparts; Facsimile/Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Copies of signature received by facsimile or electronic means shall be deemed originals for all purposes.
- i. Remedies. If City defaults under this Agreement and fails to cure such default within fifteen (15) days after receiving notice of default from Knife River, Knife River shall have the right to terminate this Agreement by giving written notice to City, demand that City specifically perform City's duties and obligations under this Agreement, or demand that City pay monetary damages for City's failure to perform the terms of this Agreement. If Knife River defaults under this Agreement and fails to cure such default within fifteen (15) days after receiving notice of default from City, City shall have the right to terminate this Agreement by giving written notice to Knife River, or demand that Knife River specifically perform Knife River's duties and obligations under this Agreement. City shall have no right to seek damages from Knife River for City's loss of its bargain in failing to acquire the Property.

- j. Severability. The unenforceability or invalidity of any provision of this Agreement shall not render any other provision contained herein unenforceable or invalid.
- k. Cooperation. The parties, without further consideration, agree to execute such additional documents and provide such information as may be reasonably necessary to carry out this Agreement's purposes and intent and to fulfill the obligations of the respective parties under this Agreement.
- l. Brokers. Neither party has dealt with any other brokers, finders or the like regarding this transaction, and Knife River and City agree to indemnify each other and to hold each other harmless against any and all claims, damages, costs or expenses of or for any other such fees or commissions resulting from their actions or agreements regarding this Agreement's execution or performance, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorney's fees and will pay all costs of defending any action or lawsuit brought to recover such commission amount.

WHEREFORE, the parties have executed this Agreement as of the date first set forth above.

**KNIFE RIVER:
JTL GROUP, INC.**

By:  **DAVID RESCH**
 Its: **Vice President**

**CITY:
CITY OF BILLINGS**

By: _____
 Its: _____

EXHIBIT A-1

PROPERTY DESCRIPTION

The legal description for the property south of Hesper Road will be:

Tract 2A of Certificate of Survey _____ TBD after filing _____ Located in the N1/2 of Section 22, T1S, R25E P.M.M. Yellowstone County Montana (144.80 Acres)

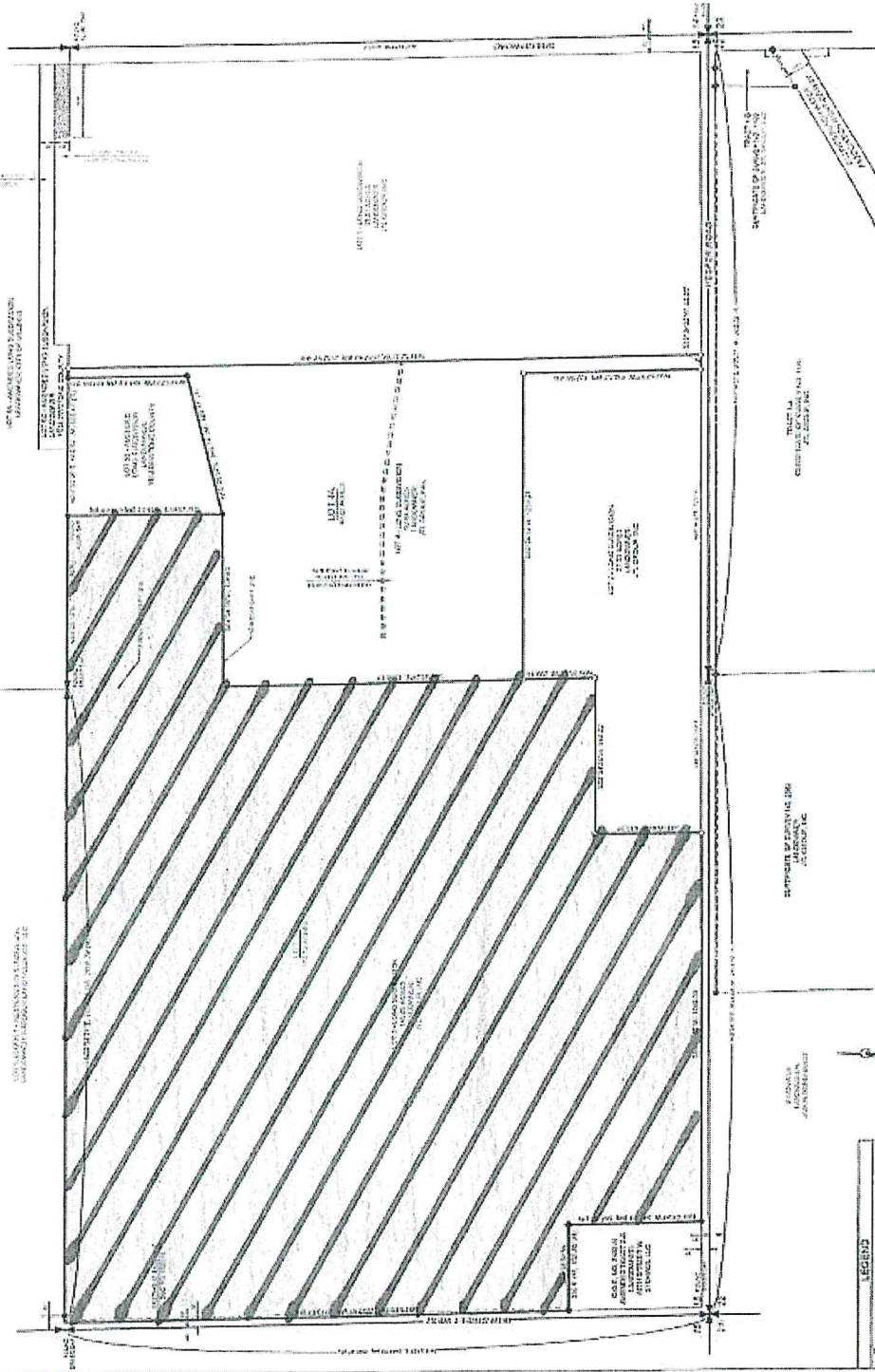
The legal description for the property north of Hesper Road will be:

Lot 3A of the Amended Plat of Long Subdivision Located in the S1/2 of Section 15, T1S, R25E P.M.M. Yellowstone County Montana. (156.04 Acres)

Total acres 300.84

EXHIBIT A-2
MAP DEPICTION OF PROPERTY

AMENDED PLAT
LOT 3 AND LOT 4 OF LONG SUBDIVISION
LOCATED IN THE S1/2 OF SECTION 15, T018, R28E, P.M.M.
YELLOWSTONE COUNTY, MONTANA



CERTIFICATE OF COUNTY ATTORNEY
 I, _____, County Attorney for Yellowstone County, Montana, do hereby certify that the foregoing is a true and correct copy of the original plat on file in my office.

CERTIFICATE OF COUNTY TREASURER
 I, _____, County Treasurer for Yellowstone County, Montana, do hereby certify that the foregoing is a true and correct copy of the original plat on file in my office.

CERTIFICATE OF REGISTERING THE DEED
 I, _____, Register of Deeds for Yellowstone County, Montana, do hereby certify that the foregoing is a true and correct copy of the original plat on file in my office.

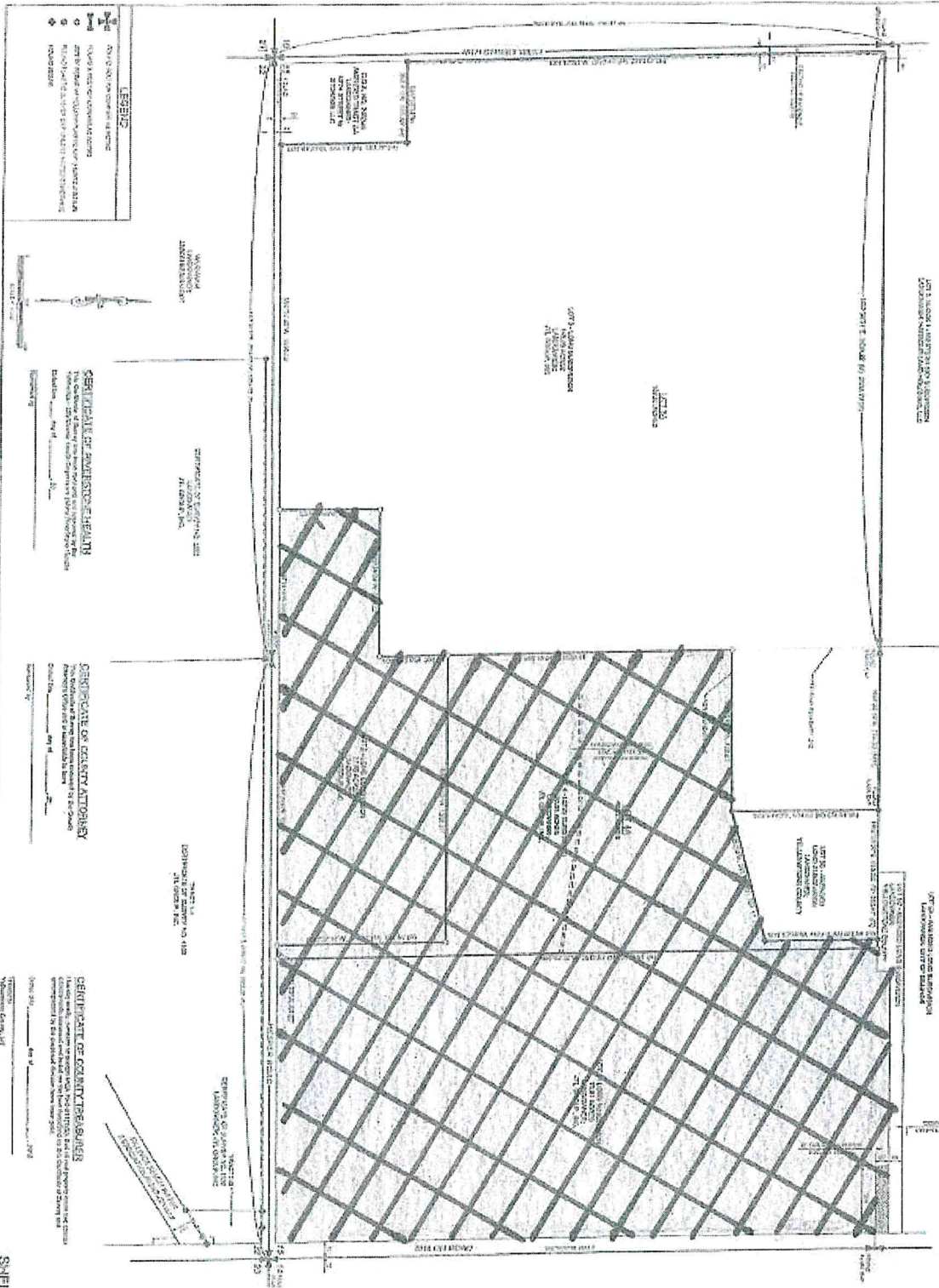
LEGEND
 + CORNER
 = EASEMENT
 - EASEMENT
 - EASEMENT
 - EASEMENT

SHEI

EXHIBIT B
KNIFE RIVER'S ADJACENT PROPERTY

AMENDED PLAT

LOT 3 AND LOT 4 OF LONG SUBDIVISION
 LOCATED IN THE S1/2 OF SECTION 15, T01S, R29E, P.M.M.
 YELLOWSTONE COUNTY, MONTANA

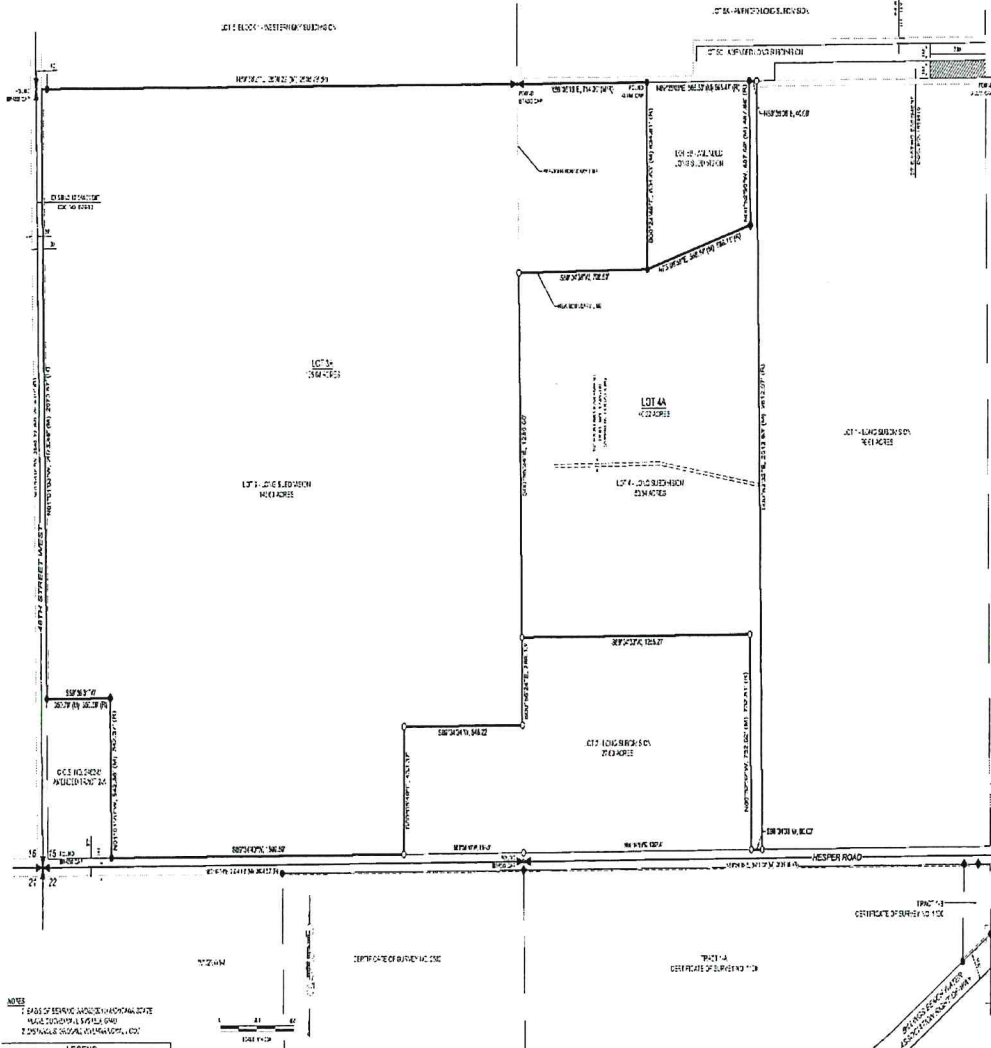


SNEI

EXHIBIT C
REPLAT OF PROPERTY

AMENDED PLAT OF LOT 3 AND LOT 4 OF LONG SUBDIVISION

LOCATED IN THE S1/2 OF SECTION 15, T01S, R25E, P.M.M.
YELLOWSTONE COUNTY, MONTANA



LAYOWNERS CERTIFICATE

I, the undersigned, being the owner of the above described premises, do hereby certify that the same are the property of the above named person or persons, and that the same are not subject to any lien or claim of any person other than the person or persons named herein, and that the same are not subject to any other claim or lien of any person.

ACKNOWLEDGMENT

Subscribed and sworn to before me this _____ day of _____, 20____, at _____, Montana.
Notary Public for Montana

LEGAL DESCRIPTION

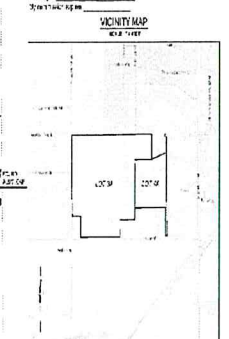
Lot 3 and Lot 4 of the Long Subdivision, Section 15, Township 01 North, Range 25 East, Prairie Provinces Meridian, Yellowstone County, Montana.

CERTIFICATE OF SURVEYOR

I, the undersigned, being a duly licensed and qualified surveyor, do hereby certify that the above described premises are the property of the person or persons named herein, and that the same are not subject to any lien or claim of any person other than the person or persons named herein, and that the same are not subject to any other claim or lien of any person.



Notary Public for Yellowstone County, Montana



T	R	S	SEC
01	25	15	25E

- LEGEND**
- EASEMENT
 - PROPERTY LINE
 - BOUNDARY LINE
 - ADJACENT PROPERTY
 - ROAD
 - RAILROAD
 - WATER
 - UTILITY

CERTIFICATE OF RIVERSTONE HEALTH
I, the undersigned, being a duly licensed and qualified health officer, do hereby certify that the above described premises are the property of the person or persons named herein, and that the same are not subject to any lien or claim of any person other than the person or persons named herein, and that the same are not subject to any other claim or lien of any person.

CERTIFICATE OF COUNTY ATTORNEY
I, the undersigned, being a duly licensed and qualified attorney, do hereby certify that the above described premises are the property of the person or persons named herein, and that the same are not subject to any lien or claim of any person other than the person or persons named herein, and that the same are not subject to any other claim or lien of any person.

CERTIFICATE OF COUNTY TREASURER
I, the undersigned, being a duly licensed and qualified treasurer, do hereby certify that the above described premises are the property of the person or persons named herein, and that the same are not subject to any lien or claim of any person other than the person or persons named herein, and that the same are not subject to any other claim or lien of any person.

CERTIFICATE OF FILING BY CLERK AND RECORDER

AMENDED PLAT LONG SUBDIVISION



SHEET 1 OF 1

EXHIBIT D

INSURANCE REQUIREMENTS

Insurance. City and its contractor(s) and agents(s) (collectively referred to herein as “Contractor” for purposes of these insurance requirements and this Exhibit D) shall obtain, at its own expense, from reliable insurance carriers satisfactory to the Owner and authorized to do business in the state where the Work is to be performed, the following applicable insurance policies indicated below, with limits not less than those specified:

1. Worker’s Compensation insurance complying with the law of the state(s) in which any work under this Contract is to be performed, whether or not required by such laws to maintain such insurance, and Employer’s Liability Insurance with limits of \$1,000,000.
- If a State Fund is to evidence the Workers’ Compensation coverage, an endorsement or policy providing stop gap coverage in place of Employer’s Liability is acceptable.
- No waivers of workers compensation insurance by independent contractors will be accepted.
2. Commercial General Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and general products liability aggregate of \$2,000,000 each, covering all obligations or operations to be performed under this Contract. Policy shall include two years completed operations coverage, no modifications that reduce the standard coverage provided under a commercial liability form, and delete railroad exclusions from contractual section or definition section of insured contract.
3. Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence to include coverage for all owned, non-owned, and hired vehicles.
4. If applicable, Contractor’s Pollution Liability insurance, \$1,000,000 each occurrence. This policy shall protect against the actual or alleged liability and costs arising from the sudden and accidental release of pollutants or hazardous materials arising from the Contractor’s work.
5. Commercial Umbrella Liability/Excess Liability insurance providing coverage in excess of the limits specified above (except Workers Compensation) with limits of not less than \$5,000,000 per occurrence.

General Insurance Provisions.

1. Any and all deductibles/self-insured retentions in the above-described insurance policies shall be assumed by, for the account of, and at the sole risk of the Contractor.

Limits may be met in combination of both primary and umbrella/excess policies.

2. Any insurance on a “claims made” basis shall provide at least a one year extended reporting period if coverage is cancelled or non-renewed following termination of the agreement.

3. The “explosion,” “collapse,” and “underground” exclusions shall be removed from the liability insurance policies.

4. Cancellation of policies providing coverage herein, as it affects the interest of the Owner, shall be effective only after written notice is received by the Owner thirty (30) days in advance of any such cancellation, except if such cancellation is due to failure to pay premiums in which case 10 days’ prior written notice of cancellation is given to said Owner.

5. Upon execution of the Contract and prior to commencing Work, the Contractor shall deliver to the Owner certificates in a form satisfactory evidencing the existence of insurance as provided for above and, except with regard to Worker’s Compensation and Professional Liability Insurance, naming the Owner as an additional insured; and shall also provide primary coverage without right of contribution by any insurance carried by the Owner. Contractor will resubmit updated certificates prior to the expiration date of any required insurance.

6. All of the above-described insurance policies, together with all other insurance policies now owned or purchased hereunder, shall contain provisions that the insurance carriers will have no right of recovery or subrogation against Owner or any of its subsidiaries or affiliated companies and Contractor does hereby waive its right of recovery against Owner where allowed by law.

7. Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy or failure of any such insurance carrier providing insurance, or failure of any such insurance carrier to pay claims occurring, shall not be held to waive any of the provisions hereof.

8. Further, compliance by the Contractor with the insurance requirements set forth herein shall not relieve the Contractor from liability for amounts in excess of the limits of insurance.

9. Contractor shall require all of its subcontractors to fully comply with these insurance provisions, name the Owner as an additional insured, and all to be endorsed with a waiver of subrogation in favor of Owner. Any deficiencies in the coverages, policy limits, or endorsements of said subcontractor shall be the sole responsibility of the Contractor.

10. Owner shall not insure nor be responsible for any loss or damage to equipment or property of any kind owned or leased by the Contractor or its subcontractors, employees, servants, or agents.