

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

**[ALL EXHIBITS NEED TO BE REVIEWED AND APPROVED, ESPECIALLY THE REQUIREMENTS SET FORTH IN THE BMCCI.]**

PARTIES: JTL Group, Inc., dba Knife River ("Knife River"), & City of Billings ("City")

DESCRIPTION OF CASUALTY: Obligations provided pursuant to Real Property Purchase Agreement dated Oct. 15, 2019

SUM OF SETTLEMENT \$1.75 MILLION

### RECITALS

The Parties entered into that certain Real Property Purchase Agreement dated Oct. 15, 2019 ("Purchase Agreement"). At closing of the Purchase Agreement, the City acquired from Knife River certain real property in Yellowstone County, Montana, as such real property is described on the attached Exhibit A (the "Real Property"). Knife River retained ownership of certain real property in Yellowstone County, Montana, as such retained real property is described on the attached Exhibit B (the "Knife River Property"). Under the Purchase Agreement, the City agreed, among other things, to haul fill material from the Real Property and place it upon the Knife River Property. The City's duties and obligations with respect to the Real Property and the Knife River Property, including the fill project as generally referenced above, were more particularly described in paragraph 3 of the Purchase Agreement (collectively, the "Post-Closing Covenants").

### 1. Release

The Parties fully and forever release and discharge each other from any duties, obligations and/or rights with respect to, or otherwise created or imposed by, Post-Closing Covenants. The Parties further release each other from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Purchase Agreement, including but not limited to all claims that were raised or could have been raised concerning the Post-Closing Covenants. The Parties intend by this Mutual Release and Settlement Agreement to terminate the Purchase Agreement as of the date of execution of this Mutual Release and Settlement Agreement. All agreements between them related to the Real Property and the Knife River Property described in Exhibits A and B, respectively, shall be contained in this Agreement.

In addition to a mutual release of claims, and as part of the material consideration for this Mutual Release and Settlement Agreement, the Parties agree to the following provisions that are effective upon full execution of this Mutual Release and Settlement Agreement:

1. Annexation, Zoning and Land Use. From time to time, Knife River may, at its sole cost and expense, prepare and submit any annexation petition or initiative, or any

application to change any zoning or land use designation, with respect to all or a portion of the Knife River Property. Upon submission by Knife River of any such completed petition, initiative, or application, and payment by it of any applicable fee, City agrees to use reasonable efforts to process, and otherwise assist Knife River in obtaining approval of any such petition, initiative, and/or application pursuant to any process or regulations in effect at the time of submission of a petition, initiative, or application. If only a portion of the Knife River Property is identified in such petition, initiative or application by Knife River, then the provisions of this paragraph shall continue to apply to the balance of the Knife River Property. For purposes of this Section 1 and Section 11, City's "reasonable efforts" shall include the timely taking of action within the City's control to process, and otherwise assist Knife River in obtaining approval of, any such petition, initiative or application. Provided, however, that the parties understand and agree that the City cannot promise or guarantee, and hereby expressly does not so promise or guarantee, the outcome or final decision of annexation, zoning or land use designation efforts. Annexation, zoning and land use designation are done through the exercise of legislative process by the Montana State law, the City Code and the City Council, and that process is subject to legislative changes that the City cannot control, as well as a vote of the City Council which could impose conditions upon approval. The City cannot, and does not, agree in advance to any annexation, zoning or land use designation decision.

2. West End Neighborhood Plan. City agrees to assist in obtaining the land use designation of the Knife River Property in the new West End Neighborhood Plan in accordance with the map attached as Exhibit C. Such designation shall be subject to public process and adoption by City Council. Provided, however, the parties understand and agree the land use designation is ultimately subject to approval by City Council and cannot agree in advance to a specific land use designation.
3. Water and Sewer Service. City shall make water service reasonably available to the Knife River Property at two locations for extension by future development— one 16-inch tee on the 36-inch water main along the western boundary of Lot 2 and one connection to the 16-inch main at the northeast corner of Lot 1 near the intersection of Shiloh Crossing Boulevard and Shiloh Road. The City will provide three sewer services to the south property line of the Knife River Property with the Hesper Sewer Project that may be extended in the future by development as a main. One 12-inch sewer service will be provided at approximately STA 5+00 to Lot 1, one 12-inch service to Lot 4A and one 12-inch service to Lot 2 at approximately STA 13+08. The City will extend the Hesper Sewer Project to the westernmost boundary of Lot 2. The water and sewer service connections described herein shall have adequate capacity and active conveyance to serve the Knife River Property as same is proposed to be rezoned as set forth above in Section 2. The water and sewer service connections shall be completed no later than one hundred eighty (180) days after the complete execution of this Mutual Release and Settlement Agreement or May 15, 2026, whichever is later.
4. Fees. To the extent allowed by law, City shall waive all applicable fees for Knife River's connection to the City waterline and sewer system for the Knife River Property at all locations within the public rights way, including but not limited to at

the southwest corner of the roundabout and Shiloh Road. A list of the waived fees is set forth on the attached Exhibit D.

5. Reclamation. The parties acknowledge and agree that all reclamation obligations with respect to the Real Property have been completed and that Knife River has received a full reclamation release with respect to the Real Property.
6. Fill dirt. City will deliver, or will cause to be delivered, at its sole cost and expense, at least 500,000 cubic yards of fill material to the Knife River Property in accordance with the terms of and the time deadlines set forth in the W.O. 19-12 West End Reservoir Fill Material Delivery project, a complete copy of which (including Addendum No. 1) is attached as Exhibit E (the "WER Contract"). City hereby represents and warrants that (1) the fill material will be removed solely from the Real Property in connection with the City's general project design for the Real Property as generally depicted on the attached Exhibit F, and (2) to City's actual knowledge, there has been no environmental contamination on the Real Property since the City acquired it from Knife River. If more than 500,000 cubic yards of fill material is available to be removed from the Real Property, City will advise Knife River of same in writing, and within thirty (30) days thereafter, Knife River shall notify City in writing or email communication if it elects to have City, at City's sole cost and expense, deliver such excess to the Knife Real Property. On or before the 3 year anniversary of date of this Agreement, no fill material will be removed from the Real Property to a site other than the Knife River Property without the express written consent of Knife River (and for purposes of this provision, Knife River will be deemed to have provided such express written consent to City if Knife River fails to make an election to receive such excess fill material within the thirty (30) day period set forth above). The fill material will be measured (and certified to Knife River) by a third-party pre-survey and post-survey of the Real Property from which the material is removed. Total quantity shall be calculated through engineering software to confirm the total quantity of fill material delivered is met and the City shall certify that no fill material was removed from the Real Property that was not delivered to the Knife River Property. City shall use reasonable efforts to deliver the fill material to the place on the Knife River Property where Knife River designates it to be placed; and in absence of any other designation by Knife River, the fill material will be placed on the south and east portion of the Knife River Property as generally depicted on the attached Exhibit G. City has no obligation or duty to compact the fill material or perform final grading of it. City's only obligation is to deliver the fill material and place it where Knife River designates the material to be placed. The City shall engage a qualified contractor to perform the fill project in material compliance with the WER Contract, which shall not be changed, amended, or modified in any way that would affect Knife River or the Knife River Property without the express written consent of Knife River, and the City shall ensure that at all applicable times the City and its contractor and any other agents meet the insurance requirements set forth on the attached Exhibit H (which are similar to the insurance requirements set forth on Exhibit D of the Purchase Agreement). The contractor for the City shall obtain and maintain, at its sole cost and expense, a Storm Water Pollution Prevention Plan (hereinafter, "SWPPP") permit for the hauling of material. City shall, and shall cause the contractor to, cooperate with Knife River in obtaining the SWPPP permit and to make reasonable

changes to the SWPPP permit so that it does not negatively impact or otherwise violate permit MTR000424 held by Knife River or its affiliate. A copy of permit MTR000424 is attached as Exhibit I. The fill project described herein shall be completed on or before the date set forth in the WER Contract. Provided that the parties agree that the conditions stated in Standard General Conditions, Article 12 of MPWSS, for an extension of contract times in the WER Contract shall be incorporated and apply to the deadline stated herein Section 6. Provided also that the parties agree that City shall not be responsible or liable for any subsequent movement and/or settlement of any fill dirt provided by City pursuant to the terms herein.

City and its contractor shall complete the fill project described herein 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.

7. Notice. The City shall provide a thirty (30) day notice to Knife River in either written correspondence or by email communication prior to entering the Knife River Property and delivering the fill material described in sub-paragraph 6 above (and no such notice given or purported to be given prior to the complete execution of this Mutual Release and Settlement Agreement shall be effective). The written notice shall also provide reasonable estimates of the expected start to finish timeline or fill rate so that Knife River can make appropriate equipment arrangements to move and/or compact such fill material. Knife River expressly grants the City permission to enter upon the Knife River Property to deliver said material and shall not unreasonably delay or block delivery. City acknowledges that the Knife River Property is an active DEQ mine site and must maintain secure and restricted access. City shall ensure that its activities with respect to the fill material will not interfere with or otherwise diminish the secured and restricted access of the Knife River Property.

If the City's project timing necessitates hauling the fill material prior to Knife River having the fill area prepared and equipment available to spread and compact the fill material, the City shall stockpile the material on existing ground at a location on the Knife River Property that is designated by Knife River.

8. SWMM. As a consideration for this Mutual Release and Settlement Agreement, upon annexation of the Knife River Property into City limits and at the time of future development of the Knife River Property, the City shall waive, and hereby waives, all onsite stormwater quantity requirements listed in the Stormwater Management Manual (SWMM) for development occurring on each of the lots consisting of the Knife River Property, being Lots 1, 2 and 4A, Long Subdivision Amended ("Lots") as shown in Exhibit J.

The Lots are located within the Special Discharge Area specified in the SWMM that limits the maximum allowable offsite discharge from the Lots to a City facility. The City shall waive, and hereby waives, all requirements of the Special Discharge Area for the Lots.

Additionally, the SWMM requires onsite stormwater storage for Subdivision and Commercial Property Development of the Lots. The City shall waive, and hereby waives, this requirement for the Knife River Property and any runoff directed to the City's stormwater facility located south of Hesper Road shown in Exhibit J.

Knife River agrees that the Lots shall mitigate water quality requirements onsite pursuant to the requirements provided in the SWMM in effect at the time that each portion, part or tract of the Lots is developed. The stormwater shall be treated to meet MS4 requirements prior to being discharged offsite to a City facility. Knife River shall deliver stormwater to the City facility at Knife River's sole expense.

All other drainage improvements shall comply with the provisions of the SWMM and Chapter 28 of the Billings, Montana City Code ("BMCC") in place at the time of each portion, part or tract of development on the Lots. Such drainage improvements provisions of the SWMM and BMCC in effect as of the date of this Mutual Release and Settlement Agreement are attached as Exhibit K.

9. Payment. As additional consideration for this Mutual Release and Settlement Agreement, City shall pay to Knife River the sum of \$1.75 Million. Payment shall be made in cash in full on or before the earlier of (a) September 1, 2025 or (b) thirty (30) days from the City's start of the fill project, which is defined as the day that the City begins moving material on its Real Property.
10. Indemnification. City shall fully protect, defend, indemnify, save and hold harmless Knife River, and its officers, agents, employees, parent, divisions, subsidiaries and affiliate companies (collectively, "Indemnities"), 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 this Mutual Release and Settlement Agreement. To the fullest extent allowed by law, City further agrees to 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.
11. Annexation, Zoning and Land Use Damages. If City breaches its obligation to use reasonable effort to process, and otherwise assist Knife River in obtaining approval of, a petition, initiative, and/or application under Section 1 herein, and any such breach is solely caused by City's lack of diligence, City shall pay \$1,000 per day to Knife River until breach is cured.
12. Water and Sewer Service and Fill Project Damages. If City does not complete its water and sewer service connection obligations under Section 3 by the deadline

set forth therein, City shall pay \$1,000 per day to Knife River until such breach is cured. If City does not complete the fill project under Section 6 by the deadline set forth therein, City shall pay \$500 per day to Knife River until such breach is cured. No damages shall be payable by City to Knife River hereunder if the failure to meet an applicable deadline is caused by an act of God, flood, fire, earthquake, war, invasion, terrorist threat or act, riot or other civil unrest, national or regional emergency, or other similar events.

13. As-Is and Release Provisions. The Parties understand and agree that provisions attached as Exhibit L (the "As-Is and Release Provisions") are incorporated fully into the terms and conditions and shall survive execution of this Mutual Release and Settlement Agreement. The As-Is and Release Provisions originate from paragraphs 10 and 11 of the Purchase Agreement. Nothing in this Mutual Release and Settlement Agreement shall in any way limited or diminish the terms, conditions, or application of the As-Is and Release Provisions.

The Parties further agree to cooperate fully in any necessary decisions or acts to accomplish the annexation and zoning decisions described above, provided that the Parties agree and understand that all such decisions must be approved by the City Council.

## **2. Future Damages**

Inasmuch as the claims, injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, the Parties agree, as a further consideration, that this Mutual Release and Settlement Agreement applies to any and all claims, injuries, damages and losses resulting from the Post-Closing Covenants, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated. Knife River specifically acknowledges and releases any future claim it may have to claims related to, arising from, or concerning settlement of the Knife River Property, including settlement of any fill material delivered by City pursuant to this Mutual Release and Settlement Agreement.

## **3. No Admission of Liability**

It is understood that this Mutual Release and Settlement Agreement is the sole consideration for full satisfaction and accord to compromise disputed claims, and that neither the consideration paid and exchanged by either Party, nor the negotiations for settlement, shall be considered as an admission of liability by any Party.

## **4. No Additional Claims**

The Parties represent that no additional claims are contemplated against any other Party potentially liable for the losses, damages, and injuries for which this Mutual Release and Settlement Agreement is given. The Parties covenant and agree to mutually indemnify and save harmless each other from all such claims and demands, including reasonable attorneys' fees and all other expenses necessarily incurred.

## **5. Disclaimer**

The Parties have carefully read the foregoing, discussed its legal effect with their attorney(s), understand the contents thereof, and sign the same of their own free will and accord. This Mutual Release and Settlement Agreement shall be binding upon the Parties' owners, affiliates, subsidiaries, parent companies, and successors. For the avoidance of doubt, the obligations, agreements and waivers of the City contained herein (including with respect to annexation, zoning, fill material and waivers of certain requirements) shall continue to apply in the event Knife River sells all or a portion of the Knife River Property to a third party as if such third party were originally a party hereto.

## **6. Confidentiality/Agreement Not to Publicize**

To the extent allowed by Montana law, the Parties agree that the Parties shall not disclose or publicize the terms of the release and settlement contained in this Mutual Release and Settlement Agreement, provided that (a) Knife River shall be allowed to disclose this Mutual Release and Settlement to a third party in connection with a proposed transaction related to the Knife River Property or any portion thereof; and (b) the Parties recognize that Montana law provides that a settlement release involving a public entity is a public record available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure. The Parties agree to abide by Montana law pertaining to the disclosure of this Mutual Release and Settlement Agreement should that become an issue.

## **7. Severability**

Should any provision of this Mutual Release and Settlement Agreement be determined to be unenforceable, all remaining terms and clauses shall remain in force and shall be fully severable.

## **8. Choice of Law, Parol Evidence, and Venue**

This Mutual Release and Settlement Agreement constitutes the entire agreement between the Parties and fully extinguishes and supersedes any and all prior oral agreements which are contrary to the foregoing; provided that Purchase Agreement may apply to the extent necessary with respect to any interpretation or enforcement of the As-Is and Release Provisions. This Mutual Release and Settlement Agreement shall not be modified, altered or discharged except by an instrument in writing, signed by the Party against whom enforcement of the amendment, alteration, or modification is sought. The laws of the State of Montana shall apply to the interpretation of this Mutual Release and Settlement Agreement and venue shall be in the Thirteenth Judicial District Court of the State of Montana, Yellowstone County.

## **9. Headings and Captions; Recitals**

The headings and captions used in this Mutual Release and Settlement Agreement are for convenience only, are not a part of this Mutual Release and Settlement Agreement,

and shall not alter or determine any rights or obligations under this Mutual Release and Settlement Agreement. The Recitals are incorporated and made a part of this Mutual Release and Settlement Agreement.

#### **10. Allocation of Settlement.**

City has not taken, and does not take, any position with respect to the taxability or appropriate tax treatment or tax consequences of any monies received by Knife River pursuant to this Mutual Release and Settlement Agreement, nor has the City provided any opinions or guidance on the same to Knife River.

#### **11. Construction of Agreement**

Neither this Mutual Release and Settlement Agreement nor its terms will be construed against any of the Parties by reason of their participation in its drafting. On the contrary, this Mutual Release and Settlement Agreement shall be construed as if both Parties had prepared it.

#### **12. Counterparts**

To facilitate execution, this Mutual Release and Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original and when taken together with the other signed counterparts, shall constitute one agreement which shall be binding upon and effective as to all Parties. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the Parties.

**CAUTION: READ BEFORE SIGNING!**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
On behalf of  
JTL Group, Inc., dba Knife River

**APPROVED:**

\_\_\_\_\_  
Counsel for JTL Group, Inc., dba Knife River

Dated this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
On behalf of City of Billings

**APPROVED:**

\_\_\_\_\_  
Counsel for City of Billings

Exhibit A – Legal Description Real Property

Exhibit B – Legal Description of Knife River Property

Exhibit C – Zoning Designation Map

Exhibit D – List of Waived Fees

Exhibit E - WER Contract Documents

Exhibit F – Real Property Project Design Depiction West End Reservoir Plan

Exhibit G – Default Location to Dump Fill Material

Exhibit H – Insurance

Exhibit I – KR DEQ SWPPP Permit

Exhibit J – Stormwater facility location

Exhibit K – Drainage and Improvement Provisions of SWMM and BMCC

Exhibit L – As-Is Release Provisions