

Agreement Concerning the Release and Extinguishment of Ditch Easement Rights Between Great Northern Medical Center Association and the City of Missoula

This Agreement Concerning the Release and Extinguishment of Ditch Easement Rights, hereinafter referred to as "Agreement," is entered into and made effective this 19th day of July, 2022, by and between Great Northern Medical Center Association, domestic non-profit corporation with a principal place of business at PO Box 7843 Missoula, Montana 59807 which will hereinafter be referred to as "Buyer," and the City of Missoula, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, Montana 59802, hereinafter referred to as the "City". City and Buyer may be referred to individually as "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, on December 2, 2021, the City acquired all right, title, and interest to the real property and water rights owned by the Hellgate Valley Irrigation Company ("HVIC"). Among the assets the City acquired were express, implied, statutory, and prescriptive easements owned or acquired by HVIC or its predecessors in interest.

WHEREAS, Buyer owns land encompassing some of the easements acquired by the City from HVIC, and Buyer would like to extinguish and release the easements within its property shown on the attached Exhibit A (hereinafter referred to as "the Easement Property") so that Buyer may use its real property without the restrictions imposed by the ditch easement rights held by the City.

WHEREAS, the City desires to maintain some of the easements it acquired from HVIC in order to convey irrigation or other waters through the historic HVIC conveyance system, but it has determined the Easement Property subject to this Agreement is not needed for this purpose.

WHEREAS, subject to the terms and conditions outlined below, the City desires to release to Buyer and extinguish all rights and interest in the Easement Property, and Buyer desires to have the Easement Property released and extinguished.

NOW THEREFORE, in consideration of the foregoing recitals, along with the promises and covenants contained in this Agreement, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Article 1 – PURCHASE AND SALE:

City hereby agrees to release and extinguish the Easement Property to the benefit of the Buyer, and Buyer hereby agrees pay \$10,022.30 ("Purchase Price") for such release and extinguishment.

Article 2 - CLOSING:

The closing date of the purchase of the Easement Property shall be on or before September 1, 2022 ("Closing Date"). Such closing will take place at a mutually agreeable location.

On the Closing Date, City agrees to the following:

a) City shall deliver a quit claim deed(s) or other document(s) evidencing the City's intent to release and extinguish of the Easement Property to Buyer, in a form acceptable to Buyer and that may be recorded in the property records of Missoula County.

b) If necessary, City will assist Buyer in perfecting any recordation, registration, or other filings, including any necessary DNRC filings, regarding release and extinguishment of the Easement property.

On the Closing Date, Buyer agrees to the following:

a) Buyer will pay the Purchase Price to City on the Closing Date.

Article 3 – CONTINGENCIES

This Agreement is expressly contingent upon the following:

(a) City Council approving the Closing.

(b) Buyer being satisfied, after the review provided for in Article 2.a, as to acceptability of the document evidencing the City's intent to release and extinguish the Easement Property.

If either of these contingencies is not fulfilled by Closing Date, this Agreement shall be null and void.

Article 4 - CITY'S COVENANTS:

City hereby represents and warrants the following:

a) City has the organizational and legal authority to enter into this Agreement and complete each and all of City's obligations hereunder.

b) To City's knowledge as of the date of closing, the Easement Property is free and clear of all liens, security interests, mortgages, pledges, encumbrances, ditch fees, taxes and assessments, and charges; have not been forfeited or abandoned; and are not subject to judgment, suit, lien, receivership, or any other encumbrance whatsoever. Provided, however, the City acknowledges some of the Easement Property may be made up of implied, statutory or prescriptive easements and it is impossible for City to represent and warrant the quantity and extent of every easement right making up the Easement Property. City expressly disclaims any such representation and warranty and represents only that it is conveying the Easement Rights on an "as is" basis as reflected in the deed acquired by the City from HVIC and as shown on Exhibit B.

c) City is up-to-date with all registrations, filings, and other required legal documents for the claimed existence of the Easement Property.

d) The sale of the Easement Property will not impact any pre-existing creditor.

e) There is no current or pending litigation that the City is involved in, and no threatened litigation or claims that City is aware of that might be asserted against the Easement Property.

f) To City's knowledge, City is the sole and exclusive owner of all of the Easement Property and there are no encumbrances of any kind that would prevent City from the release and extinguishment of the Easement Property. City is not aware of any other party beyond the City claiming rights to use the Easement Property.

Subject to the disclaimers as set forth herein, the City hereby expressly acknowledges that the Buyer is relying on each of these representations and warranties to enter into this Agreement. The representations and warranties given here are the only covenants City makes and expressly

disclaims any other warranty, whether express or implied. The Buyer hereby agrees to make any and all claims relating to any of the warranties represented herein by one calendar year from the Closing Date. If any third parties are also involved in the claim and Buyer is able to recover any amount from them, the amount of claim against the City shall be reduced by the amount Buyer received from the third party.

Article 5 - BUYER'S COVENANTS:

Buyer hereby represents and warrants the following:

- a) The Buyer has the power to execute the Agreement, and all requisite action has been taken by Buyer in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Buyer has the right, power and authority to execute, deliver, and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties.
- b) At Closing Buyer will be able to pay the Purchase Price and any and all other expenses related to this Agreement.
- c) Buyer has no knowledge or reason to believe any of City's representations are false or inaccurate.
- d) Buyer acknowledges and affirms that City has the present right to use the Easement Property, as well as other ditch easements acquired from HVIC upstream and downstream of the Easement Property, to convey water by open ditch or piped conveyance. By executing this Agreement, Buyer covenants with the City not to assert, argue, or maintain, or caused to be asserted, argued, or maintained, in any forum whatsoever, that the City has abandoned the ditch easements acquired from HVIC or that they may not be used for the purposes of conveying water by open ditch or piped conveyance except as contemplated by this Agreement.

The Buyer hereby expressly acknowledges that the City is relying on each of these representations and warranties to enter into this Agreement. The representations and warranties given here are the only covenants Buyer makes and expressly disclaims any other warranty, whether express or implied. The City hereby agrees to make any and all claims relating to any of the warranties represented herein by one calendar year from the Closing Date. If any third parties are also involved in the claim and City is able to recover any amount from them, the amount of claim against the Buyer shall be reduced by the amount City received from the third party.

Article 6 - CONTINUED COOPERATION:

City shall, within reason, cooperate with Buyer before, during and after closing to effectuate the transactions contemplated in this Agreement including, without limitation, the execution of any documents or the taking of any action (or the restraining from taking of any action) necessary or desirable to achieve the intended results herein.

Article 7 - EXPENSES:

Each Party agrees to be responsible for their own expenses or costs relating to or in connection with anything in this Agreement. Buyer shall be responsible for the costs of recording the deed

or other documents created to evidence the City's intent to release or extinguish the Easement Property.

Article 8 - FULL UNDERSTANDING; INDEPENDENT LEGAL COUNSEL:

The Parties each acknowledge, represent, and agree that they have read this Agreement; that they fully understand the terms thereof; and that it is executed by them after having had an adequate opportunity to consult independent legal counsel. This Agreement was the subject of negotiation between the Parties and therefore any rule of construction requiring that agreements be construed against the drafter shall not apply to the interpretation of this Agreement.

Article 9 - GENERAL PROVISIONS:

- a) GOVERNING LAW: This Agreement shall be governed in all respects by the laws of the state of Montana and any applicable federal law. Both Parties consent to jurisdiction under the state and federal courts within the state of Montana; with venue for any state law claims to be in the Fourth Judicial District of Montana. The Parties agree that this choice of law, venue, and jurisdiction provision is not permissive, but rather, mandatory in nature.
- b) LANGUAGE: All communications made or notices given pursuant to this Agreement shall be in the English language.
- c) ASSIGNMENT: This Agreement, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by either Party.
- d) AMENDMENTS: This Agreement may only be amended in writing signed by both Parties.
- e) NO WAIVER: None of the terms of this Agreement shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written agreement can constitute waiver of any of the terms of this Agreement between the Parties. No waiver of any term or provision of this Agreement shall constitute a waiver of any other term or provision or of the same provision on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.
- f) SEVERABILITY: If any provision or term of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. If a court declines to amend this Agreement as provided herein, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining terms and provisions, which shall be enforced as if the offending term or provision had not been included in this Agreement.
- g) ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings, whether written or oral, including the prior Purchase Agreement executed by the Parties.
- h) HEADINGS: Headings to this Agreement are for convenience only and shall not be construed to limit or otherwise affect the terms of this Agreement.
- i) COUNTERPARTS: This Agreement may be executed in counterparts, all of which shall constitute a single agreement. If the dates set forth at the end of this document are different, this Agreement is to be considered effective as of the date that both Parties have signed the agreement, which may be the later date.
- j) FORCE MAJEURE: City is not liable for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of

military authorities, riots, embargoes, acts of nature and natural disasters, and other acts which may be due to unforeseen circumstances.

k) SURVIVAL OF TERMS: Any provision of this Agreement which would, by its nature, be expected to survive termination, expiration, or the Closing Date, shall survive and remain in full force and effect.

l) NOTICES ELECTRONIC COMMUNICATIONS PERMITTED: i) Any notice to be given under this Agreement shall be in writing and shall be sent by first-class mail, airmail, or e-mail, to the address of the relevant Party set out at the head of this Agreement, or to the relevant email address set out below or other email address as that Party may from time to time notify to the other Party in accordance with this clause.

Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of airmail), or next working day after sending (in the case of e-mail).

In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission was confirmed and/or acknowledged as the case may be.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first written above.

GREAT NORTHERN MEDICAL CENTER ASSOCIATION

By *Matthew Mellott*
Matthew Mellott (Jul 19, 2022 11:13 MDT)
Matthew Mellott Authorized Signatory

CITY OF MISSOULA, MONTANA

By _____
John Engen, Mayor

Attest:

By _____
Martha L. Rehbein C.M.C, City Clerk

COS 5093
Tract 6-A1

GREAT NORTHERN LOOP

2360 Mullan Road
Phase 2
Lot 6

2829 Great Northern Lp

Book 25 Plats Page 32

53'

MULLAN RD

Lot 5

Lot 4



0 50 Feet

EXHIBIT 'A'

Legend
Book 37 Deeds Page 84
Property Lines

A 8849 Agreement to Release Ditch Easement 07.1922 - Great Northern Medical Center Association

Final Audit Report

2022-07-19

Created:	2022-07-19
By:	Katie Emery (EMERYK@CI.MISSOULA.MT.US)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQXOQ-ufQYgppqXZagsgZ6UUTaNQXQFJHw

"A 8849 Agreement to Release Ditch Easement 07.1922 - Great Northern Medical Center Association" History

 Document created by Katie Emery (EMERYK@CI.MISSOULA.MT.US)

2022-07-19 - 5:10:42 PM GMT- IP address: 63.235.58.131

 Document emailed to matt@sterlingcreadvisors.com for signature

2022-07-19 - 5:11:48 PM GMT

 Email viewed by matt@sterlingcreadvisors.com

2022-07-19 - 5:11:51 PM GMT- IP address: 66.249.84.75

 Document e-signed by Matthew Mellott (matt@sterlingcreadvisors.com)

Signature Date: 2022-07-19 - 5:13:33 PM GMT - Time Source: server- IP address: 35.133.32.133

 Agreement completed.

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