

Business Purchase Agreement

This Business Purchase Agreement, hereinafter referred to as "Agreement," is entered into and made effective this ____ day of _____, 2020, by and between HEG Holdings, LLC, a Montana limited liability company, with a principal place of business at 3009 Queen St., Missoula, MT 59801, which will hereinafter be referred to as "Seller," 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 "Buyer". Seller and Buyer may be referred to individually as "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, Seller owns HEG Montana, LLC, which is organized and operated in the State of Montana;

WHEREAS, Seller's Business has provided consulting services and managed operations for the City's hybrid poplar farm;

WHEREAS, Seller desires to sell HEG Montana, LLC, and Buyer desires to purchase HEG Montana, LLC, as a going concern, including all elements involved in its operation (all of which shall collectively be referred to as the "Business");

NOW THEREFORE, in consideration of 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 - SALE:

Seller hereby agrees to sell to Buyer as a going concern all the undertakings and assets owned by Seller in connection with the Business, and Buyer hereby agrees to purchase the Business as a going concern from Seller subject to the terms and conditions of this Agreement and in reliance on the representations and warranties contained herein. The purchase shall include, without limiting the generality of the foregoing, the following:

- a) All tangible and intangible assets, as those terms are commonly used, and other items of value owned by the Business ("Assets").
- b) The leasehold interest in the lease held by the Business from the Clouse Family ("the Lease").
- c) The goodwill of the Business together with the exclusive right to the Buyer to represent itself as carrying on business in succession to the Seller and generally operate the normal course of the Business operations.

Article 2 - PURCHASE PRICE:

The purchase price for the undertaking and assets of the Business shall be \$165,938 ("Purchase Price").

Article 3 - CLOSING:

The closing date of the sale of the Business shall be on or before December 31, 2020 ("Closing Date"). Such closing will take place at a mutually agreeable location.

On the Closing Date, Seller agrees to the following:

a) Seller shall deliver all of the Assets to Buyer, in the same amount and in the same condition as they were when Buyer agreed to purchase. The Assets shall have no liens or other encumbrances, other than to Buyer.

b) Seller agrees, if possible, to deliver the Assets in a manner that Buyer has requested, except that no additional cost shall be assessed to Seller for the delivery.

c) Seller shall also deliver to Buyer any and all documents memorializing the transfer of Assets and the Lease to Buyer, including any necessary Bills of Sale or Assignment of Lease agreements.

d) If necessary, Seller will assist Buyer in perfecting any recordation, registration, or other filings regarding the transfer and new ownership of the Assets and the Lease.

On the Closing Date, Buyer agrees to the following:

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

Article 4 - DEPOSIT:

Within fifteen days of the execution of this Agreement, Buyer shall deliver to Seller a deposit of the following amount: \$1,659 ("Deposit").

If the sale of the Business does not go through due to any action, inaction, or misrepresentation on the part of Buyer, Seller shall retain the Deposit. If the sale of the Business does not go through due to any action, inaction, or misrepresentation on the part of the Seller, Buyer shall receive the Deposit back.

Article 5 - BUSINESS NAME:

Seller hereby agrees to effectuate any and all steps necessary to properly transfer the ownership of the Business Name to Buyer, including through an assignment of registered intellectual property, if necessary, as well as any filings with the State of Montana.

Article 6 - SELLER'S COVENANTS:

Seller hereby represents and warrants the following:

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

b) The Business is up-to-date with all registrations, filings, and other required legal documents for its valid existence and continued operations.

c) The sale of the Business will not impact any pre-existing creditor.

d) The Business does not owe any outstanding amounts to the Internal Revenue Service as a result of back taxes or any other penalty and is up-to-date with all taxes owed to the United States Internal Revenue Service, the State of Montana, and any other governmental entity, domestic or foreign.

e) The Business is a legal entity in the United States.

f) The Seller or other authorized entities will not make any changes to the current staffing structure of the Business, including hiring or firing employees, changing employee roles, or changing salary or benefit amounts, prior to the Closing Date.

g) There is no current or pending litigation that the Business is involved in, and no threatened litigation or claims that Seller is aware of that might be asserted against the Business.

h) The Business is up-to-date for all payments on all insurance policies that are required or that a reasonable similarly situated Business owner would obtain.

i) The Business is not infringing upon any third party's intellectual property. Any trademarks, service marks, trade names, copyrights, or patents used by the Business are the legal and exclusive property of the Business. Any registered trademarks, service marks, trade names, copyrights, or patents are registered with the appropriate offices of the United States government. There are no infringement claims against the Business, as far as the Business is currently aware.

j) Any intellectual property not owned by the Business has been duly and legally licensed to the Business and the sale of the Business will not impact the validity of any license.

k) The Seller is the sole and exclusive owner of all of the Assets of the Business and there are no encumbrances of any kind that would prevent Seller from the sale of Assets or assignment of the Lease.

l) The Seller is up to date on the performance of all actions or the payment of all amounts, and agrees to pay any and all bills owed by the Business prior to the Closing Date.

m) Seller represents there are no other outstanding liabilities of the Business that have not otherwise been disclosed.

The Seller 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 Seller 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 Seller shall be reduced by the amount Buyer received from the third party.

Article 7 - BUYER'S COVENANTS:

Buyer hereby represents and warrants the following:

a) Buyer has the organizational and legal authority to enter into this Agreement and complete each and all of Buyer's obligations hereunder. Final approval of the purchase is subject to City Council approval.

b) Buyer is able to pay the Purchase Price and any and all other expenses related to this Agreement.

c) The purchase of the Business will not impact any pre-existing creditor.

d) Buyer has no express knowledge or reason to believe any of Seller's representations are false or inaccurate.

The Buyer hereby expressly acknowledges that the Seller 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 Seller 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 Seller is able to recover any amount from them, the amount of claim against the Buyer shall be reduced by the amount Seller received from the third party.

Article 8 - CONDITIONS PRECEDENT:

a) Conditions precedent to be performed by Seller. Seller hereby acknowledges and agrees that Buyer's obligation to complete the purchase of the Business, as well as to perform all other obligations hereunder, is subject to the satisfaction of the following conditions by Seller, before the Closing Date:

- I) All warranties, representations, or other acknowledgments made in this Agreement will be entirely accurate and true in every respect on the Closing Date.
- II) Seller will ensure all paperwork required for the sale of the Business and execution of this Agreement, including documents, forms, registrations, assignments, authorizations or other, will be duly completed.
- III) Seller will have all paperwork for the sale of Business duly executed.
- IV) Seller will provide Buyer with any and all information required so that Buyer may step into the shoes of the Seller for the proper operation of the Business.
- V) Seller will obtain all necessary consents required, under any existing contracts, leases, or otherwise, for Buyer's continued operation of the Business.

b) Conditions precedent to be performed by Buyer. Buyer hereby acknowledges and agrees that Seller's obligation to complete the purchase of the Business, as well as to perform all other obligations hereunder, is subject to the satisfaction of the following conditions by Buyer, before the Closing Date:

- I) All warranties, representations, or other acknowledgments made in this Agreement will be entirely accurate and true in every respect on the Closing Date.
- II) Buyer will ensure all paperwork required for the purchase of the Business and execution of this Agreement, including documents, forms, registrations, assignments, authorizations or other, will be duly completed.

If either Party does not satisfy their obligations under this clause, the entire Agreement will be null and void and there shall be no further relationship or obligations between the Parties.

Article 9 - BUYER ACCESS:

Buyer may request access to Seller's Business documents prior to the Closing Date, including staffing documents, financial documents, marketing documents, or others. Seller shall allow Buyer or any of Buyer's agents to inspect any such documents at a reasonable time and place.

Article 10 - EMPLOYEES

Buyer hereby agrees to maintain unchanged the employment status of each employee of the Business, including, but not limited to, title, salary, and leave benefits, among others. As such, Seller hereby acknowledges and agrees that Seller has maintained full and accurate records for all employees of the Business ("Employees") and that other than has been expressly disclosed to the Buyer, the Business owes no payment or compensation obligation to any Employee.

Seller will be responsible for all payments to Employees, whether salary or other compensation, up to and including the Closing Date. Buyer will be responsible for all payments to Employees from the day after the Closing Date.

Article 11 - LIABILITIES:

All day-to-day business debts, such as those owed to ongoing suppliers, shall be transferred as part of the sale of the Business. Seller shall not be responsible to pay off such business debts and instead, the debts that the Business owes as well as debts that are owed to the Business shall transfer as part of this Agreement.

Seller hereby agrees to indemnify Buyer, and all of Buyer's agents, employees, officers, and representatives against any and all damage, liability, and loss, as well as legal fees and costs incurred, however caused, as a result of the ownership or operation of the Business before and including the Closing Date, including any employment claims.

Article 12 - CONTRACTS:

All existing contracts that the Business has with any third parties, including clients, customers, suppliers, agents, or others as applicable, that may legally be assigned through the purchase of the Business, are hereby assigned. This Agreement shall not, however, assign or be construed to assign any third party contract if such assignment would be a breach of that contract. After the Closing Date, Seller shall have no further responsibility with respect to the assigned contracts.

Article 13 - EXPENSES:

Each Party agrees to be responsible for their own expenses or costs relating to or in connection with anything in this Agreement.

Article 14 - GOOD FAITH OPERATION

The Seller hereby agrees to continue to operate the Business in good faith, and to preserve, protect, and enhance the goodwill of the Business up to and including the Closing Date.

Article 15 - 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.

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: Seller 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.

HEG MONTANA, LLC

By

John DiBari, [Representative Title]

CITY OF MISSOULA, MONTANA

By _____
John Engen, Mayor

Attest:

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