

RESOLUTION NO. R22-39

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE THE CONSTRUCTION AND MAINTENANCE AGREEMENT FOR SOUTH 4TH STREET PUBLIC ROADWAY BY AND BETWEEN THE CITY OF LAUREL AND MONTANA RAIL LINK, INC.

BE IT RESOLVED by the City Council of the City of Laurel, Montana,

Section 1: Approval. The Construction and Maintenance Agreement for South 4th Street Public Roadway in the City of Laurel, Yellowstone County, Montana, by and between the City of Laurel and Montana Rail Link, Inc. (hereinafter “the Construction and Maintenance Agreement for South 4th Street”), a copy attached hereto and incorporated herein, is hereby approved.

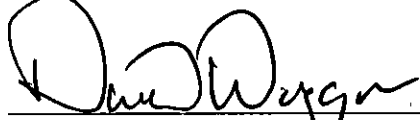
Section 2: Execution. The Mayor is hereby given authority to execute the Construction and Maintenance Agreement for South 4th Street on behalf of the City.

Introduced at a regular meeting of the City Council on the 9th day of August 2022, by Council Member Herr.

PASSED and APPROVED by the City Council of the City of Laurel the 9th day of August 2022.

APPROVED by the Mayor the 9th day of August 2022.

CITY OF LAUREL




Dave Waggoner, Mayor

ATTEST:



Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:



Michele L. Braukmann, Civil City Attorney

CONSTRUCTION AND MAINTENANCE AGREEMENT FOR SOUTH 4TH STREET PUBLIC ROADWAY IN THE CITY OF LAUREL, YELLOWSTONE COUNTY, MONTANA

RAILROAD 1ST SUBDIVISION

RAILROAD MILEPOST 0.50
DOT# 104001W

AGREEMENT, made this 9th day of August, 2022 (the "Effective Date"), between the CITY OF LAUREL, a Municipal Corporation of the State of Montana, hereinafter referred to as "CITY", and MONTANA RAIL LINK, INC., a Montana Corporation, hereinafter referred to as "RAILROAD":

WITNESSETH:

WHEREAS, RAILROAD has entered into a long-term lease with the Burlington Northern Railroad Company, a successor in interest to the Northern Pacific Railway Company, now known as the BNSF Railway Company ("BNSF"), to operate a railway company and maintain railroad tracks and infrastructure on the said RAILROAD right of way;

WHEREAS, a public roadway easement was granted by the Northern Pacific Railway Company on July 26, 1961, to the State of Montana across the RAILROAD's right of way for the public roadway now known as South 4th Street, and said easement is found in the Records of Yellowstone County at Book 780 Deeds, Page 209;

WHEREAS, CITY, RAILROAD, and the Montana Department of Transportation ("MDT") have entered into those certain agreements dated April 26, 1999, and November 4, 2002, for construction, operation and maintenance of grade crossing signals at the grade crossing DOT# 104001W at South 4th Street;

WHEREAS, CITY desires additional public improvements to South 4th Street, and the RAILROAD is amenable to these improvements as shown on the map attached and marked as Exhibit "A";

WHEREAS, the parties desire that all future South 4th Street construction, reconstruction, and maintenance projects on RAILROAD's right of way be built in accordance with plans and specifications to be prepared by CITY and approved by RAILROAD;

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the contemplated roadway improvements;

WHEREAS, the CITY will own and maintain the roadway and related appurtenances, including trails, sidewalks, drainage features, crossing signals, and traffic signals;

WHEREAS, the parties agree the RAILROAD will continue operating and maintaining its tracks and appurtenances along with maintaining grade crossing warning devices by agreement(s) and by the Administrative Rules of Montana;

NOW, THEREFORE, in consideration of the premises herein contained, the parties agree:

I

CITY or its Contractor will construct, or cause to be constructed, improvements to Griffin Drive in compliance with plans developed by CITY or its engineers and approved by the RAILROAD and approved as necessary under CITY's said agreement with MDT (within its urban route). Nothing herein shall be construed or deemed to be a ratification or an adoption by the RAILROAD of any construction plans and specifications as its own. CITY will gain RAILROAD's agreement for material changes to the project plans affecting the RAILROAD's right of way occurring after this agreement is signed

The CITY will present the attached Exhibit "C", Contractor Requirements for Work on the Right of Way of the RAILROAD, to its contractors for any maintenance or reconstruction work on the roadway or appurtenances thereto. The CITY's contractor will comply with all aspects of this attachment. There will be no equipment, manpower or work on the right of way of the RAILROAD prior to approval by the RAILROAD. **The CITY's contractor(s) will telephone the RAILROAD's Communication Network Control Center at (800) 338-4750 (a 24-hour number), and Utilities Underground Location Center (800) 424-5555, to determine if underground utilities or communication facilities are buried anywhere in the area.**

Should it become necessary for the RAILROAD to obtain the services of a consultant engineer or a contractor after this agreement is completed, and due to any exigency of the RAILROAD and the project, the CITY and the RAILROAD will mutually agree, in writing, as to the area of need and the RAILROAD's selection of a consultant or contractor.

II

CITY and the RAILROAD will perform various items of work as follows:

PART A

WORK TO BE PERFORMED BY CITY (OR ITS CONTRACTOR) AT CITY EXPENSE:

1. Except as herein provided, furnish all plans, engineering, supervision, labor, materials, supplies, and equipment necessary for construction of the project, complete in all details.
2. Perform all work not specifically mentioned as work performed by the RAILROAD necessary to complete the project in accordance with the plans and specifications.

3. Any work or modification which, under this agreement, may be performed by the Contractor will nevertheless be the obligation of the CITY, and the RAILROAD will be entitled to look to the CITY for full performance thereof.
4. CITY will provide the attached Exhibit "C" "Requirements for Contractors, Public Employees, and Private Individuals (Hereinafter Referred to as Contractor) When Working on the Railroad's Right of Way" to its Contractor. The CITY's Contractor will comply with all aspects of these attachments.
5. Submit all temporary traffic control plans affecting the RAILROAD's grade crossing to RAILROAD's Director of Engineering Jim Bieber at jbieber@mtrail.com for approval. Allow a minimum of three (3) days for RAILROAD's approval of submitted traffic control plans. Any temporary traffic control plans affecting the grade crossing must not plan to alter the active grade crossing warning system and must not utilize a Railroad's flagger to control vehicle traffic.
6. Construct a driveway approach across the sidewalk to RAILROAD's signal bungalow area.
7. CITY will pay for the purchase and delivery freight for new concrete surfaces (and end deflectors) for the two track crossings at DOT# 104001W. There will be a total of 65 track feet of concrete surface (two 32.5-foot-long) purchased.
8. Provide construction stakes, including offset stakes, as needed by RAILROAD, to mark the extents of the outer edges of trail surfaces, to facilitate installation of the concrete grade crossing surfaces.
9. Provide asphalt saw cuts in the asphalt roadway surface on both sides of the tracks at the grade crossing at five feet (5') from the nearest rail to accommodate removal of existing track structure and replacement with new track structures and concrete surfaces.
10. Dispose of asphalt removed to accommodate the new concrete crossing surfaces and maintain any temporary gravel surface in the roadway between the edges of asphalt saw cuts and the newly installed concrete surfaces at the grade crossing. Place asphalt patches in that area.
11. All temporary traffic controls, detours, notifications, temporary asphalt, and asphalt necessary for RAILROAD to complete their work will be the responsibility of the CITY. It is understood that the grade crossing will be fully closed to traffic for not more than one (1) day for railroad to complete its concrete crossing surface installation.
12. CITY's Contractor will cooperate with RAILROAD's forces and with RAILROAD's contractors to the maximum extent possible.

PART B1

WORK TO BE PERFORMED BY THE RAILROAD AT CITY'S EXPENSE:

1. Railroad Flagging. Provide railroad flagging protection during construction as deemed necessary by the RAILROAD.

PART B2

WORK TO BE PERFORMED BY THE RAILROAD AT RAILROAD'S EXPENSE:

1. RAILROAD will provide not less than five (5) days' notice of staking needs.
2. Provide at least five (5) days' notice of staking needs.
3. Provide engineering, supervision, labor, materials (except concrete surfaces and their freight), and equipment necessary for the installation of the new concrete crossing surface including upgrades to the track structure to accommodate the new surface.
4. Install concrete crossing surface materials, including upgraded track structure, to accommodate two 32.5-foot-long concrete surfaces in accordance with RAILROAD's current installation policies.
5. Dispose of track structure materials removed and not reused during construction of the new concrete surfaces at RAILROAD's cost.

PART C

SEQUENCE OF OPERATION:

1. The CITY, the RAILROAD, and the CITY's Contractor will meet at a mutually agreeable date and time. Meeting will be held at or near the grade crossing prior to any construction on RAILROAD's right of way.
2. The CITY, the RAILROAD, and the CITY's Contractor will meet at a mutually agreeable date and time at the project location to inspect the project when substantially completed within the RAILROAD's right of way but prior to the Contractor's demobilization of people and equipment.

III

All reconstruction, improvements, or maintenance work to be done by the CITY or its contractor on the RAILROAD's right of way will be done in a manner satisfactory to the RAILROAD and will be performed so as not to unnecessarily interfere with the movement of trains or traffic upon the track. The CITY will require its Contractor to take precautions to avoid damage to or interfere with the RAILROAD's track or trains and to notify the RAILROAD, as per Exhibit "C," whenever the contractor is about to perform work on, or adjacent to its track to enable the RAILROAD, upon proper notice from CITY's Contractor, to furnish flagging and other necessary protective services and devices to ensure the safety of railway operations. The RAILROAD can furnish such flagging and protective services and devices that, in its judgment, are necessary to ensure the safety of railway operations, and the CITY will reimburse the RAILROAD for the cost thereof. Whenever safeguarding of the trains or traffic of the RAILROAD is mentioned in this agreement, it is intended to include all permitted users of the RAILROAD's track.

The CITY, its contractors and subcontractors shall plan, schedule, coordinate and conduct all work so as not to cause any delay to any train.

IV

The RAILROAD will endeavor to submit on a regular basis progress bills for flagging and other protective services and devices during any work contemplated by this agreement. The progress bills will contain the dates and hours worked per day. The RAILROAD will submit a final and complete billing for flagging and other protective services within one hundred twenty (120) days after being notified of the completion of the project by the CITY. The attached Exhibit "C," which is made a part hereof, is a statement of conditions when flaggers, protective services and devices will be furnished by the RAILROAD. Railroad flagging will be billed separately from the services listed in Exhibit "B."

The RAILROAD will submit progress bills to the CITY during the progress of the work included in this agreement for the actual cost of services and expenses incurred by the RAILROAD. The estimated cost of the work, except flagging, to be performed under this agreement by the RAILROAD's forces at the expense of the CITY is shown on the detailed estimate attached as Exhibit "B" and made a part of this agreement. The RAILROAD has inspected the materials in the field prior to signing this agreement. The salvage value of materials to be retained by the RAILROAD is shown on the attached Exhibit "B". RAILROAD shall utilize its approved public projects billing rates and methods. The CITY will reimburse the RAILROAD for the actual cost and expenses incurred in connection with said work.

It is further agreed that the final and complete billing of all incurred costs will be made by the RAILROAD at the earliest practical date and that a final audit and review will be made by the CITY. Records are to be available to the CITY or their authorized representatives for audit during the contract period and for a period of three (3) years from the date of final payment.

V

All contracts between the CITY and its contractor, for the construction provided for on the roadway facility within the RAILROAD's right-of-way, shall include language that specifies the contractor is responsible to RAILROAD, including any of its affiliate RAILROAD companies, and its tenants for all damages for any unscheduled delay to any and all freight or passenger trains that is caused by the contractor's negligence, failure to comply with its requirements under this agreement, failure to properly coordinate its work with the RAILROAD or any cause not attributable to the RAILROAD, but arising from the contractor's activities that affect RAILROAD's ability to fully utilize its equipment and to meet customer service obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment and train service employees, contractual loss of incentive pay and bonuses, and contractual penalties resulting from train delays, caused by the Contractor, or its subcontractors performing work under the project identified herein.

It is understood and agreed that this section includes any RAILROAD expenses for delays arising from RAILROAD work necessitated by acts, omissions or negligence of the contractor or subcontractors. For loss of use, contractor will be billed the current freight train hour rate per train as determined from RAILROAD's record. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period. In addition to the above damages, passenger, U.S. mail trains, and certain other grain, intermodal, coal, special and freight trains operate under incentive/penalty contracts between RAILROAD and its customers. Under these arrangements, if RAILROAD does not meet its contract service commitment, RAILROAD may suffer loss of performance or incentive pay or be subject to a penalty payment. Contractor shall be responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by RAILROAD which are attributable to a train delay caused by or related to this project.

The contractual relationship between RAILROAD and its customers is proprietary and confidential. In the event of a train delay covered by this agreement, RAILROAD will share information relevant to any train delay to the maximum extent consistent with RAILROAD confidentiality obligations. Damages for train delay for certain trains could be as high as \$50,000.00 per incident.

VI

All contracts between the CITY and a contractor, for the construction provided for, or maintenance work on the roadway within the RAILROAD right of way, will require the contractor to indemnify, defend, and hold harmless the RAILROAD and any other railroad company occupying or using the RAILROAD's right of way, or line of RAILROAD, against all loss, liability and damage including attorney's fees arising from activities of the contractor, its forces or any of its subcontractors or agents, and will further provide that the contractor will carry insurance of the kind and amount hereinafter specified:

- A. **Commercial General Liability Insurance** – This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$6,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to the following;
- *Bodily Injury and Property Damage
 - *Personal Injury and Advertising Injury
 - *Fire legal liability
 - *Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- *It is agreed that any workers' compensation exclusion does not apply to railroad payments related to the Federal Employers Liability Act or a railroad Wage Continuation Program or similar program and any payments made are

deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

*The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILROAD's property.

No other endorsements limiting coverage as respects obligations under the Agreement may be included on the policy.

B. Business Automobile Insurance – This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- *Bodily injury and property damage
- *Any and all vehicles owned, used, or hired

C. Workers Compensation and Employers Liability insurance including coverage for but not limited to:

- *Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- *Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

A Certificate of Insurance must be provided to the RAILROAD prior to commencement of work.

D. Railroad Protective Liability insurance naming only the RAILROAD as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- *Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- *Endorsed to include the Limited Seepage and Pollution Endorsement
- *Endorsed to remove any exclusion for punitive damages
- *No other endorsements restricting coverage may be added
- *The original policy must be provided to the RAILROAD prior to performing any work or services under this Agreement.

The RAILROAD is to be provided with a separate and individual Railroad Protective Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against RAILROAD for all claims and suits against RAILROAD. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against RAILROAD for all claims and suits.

The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against RAILROAD for loss of its owned or leased property or property under Contractor's care, custody, or control.

Contractor's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by RAILROAD. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and RAILROAD shall be named as an additional insured with respect to work performed under this Agreement. Severability of interest and naming RAILROAD as additional insured shall be indicated on the certificate of insurance.

Prior to commencing the Work, Contractor shall furnish to RAILROAD an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify RAILROAD in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving RAILROAD arising out of this Agreement, Contractor will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to RAILROAD or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages reference above.

Not more frequently than every five years, RAILROAD may ask to reasonably modify the

required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by RAILROAD shall not be limited by the amount of the required insurance coverage.

ALL certificates of insurance required for contractor performed construction, reconstruction, improvements, and/or maintenance work will be forwarded to the RAILROAD at the following address:

**MONTANA RAIL LINK INC.
Attention: Contracts Administrator
P.O. Box 16390
Missoula, MT 59808-6390
contracts@mtrail.com
(406) 523-1566 Office
(406) 523-1529 Fax**

If the CITY, its contractor, subcontractors, or agents, in the performance of the work herein provided for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the RAILROAD, such damage or destruction shall be corrected by the CITY in the event its contractor or the insurance carriers fail to repair or restore the same.

VII

Upon completion of any maintenance, improvements, or reconstruction work, the CITY will require its Contractor to leave the RAILROAD right of way in a condition satisfactory to the RAILROAD. This determination shall be made by the RAILROAD's Chief Engineer or his designee.

VIII

The CITY agrees that in removing snow from said roadway and appurtenances (including trails/sidewalks), that the CITY will perform such snow removal in a manner as not to deposit the snow or debris on the roadbed or tracks of the RAILROAD. Any snow or debris deposited on the roadbed or track sections by actions of the CITY will be removed by

the RAILROAD with such costs of removal billed against the CITY. The RAILROAD agrees to notify the CITY of any ongoing problem in this area.

IX

In the event said roadway shall, at any time, cease to be used by the public or otherwise become vacated or abandoned, the rights and benefits of the CITY under this agreement shall immediately cease, and the CITY shall remove said roadway at its own cost and expense. To facilitate the CITY's removal of the roadway, the RAILROAD will issue to the CITY, at no cost or expense, a permit to accomplish said removal. If after a reasonable time the CITY has not removed the facility, the RAILROAD, after providing the CITY a minimum of 60 days prior notification, may remove said facility at the expense of the CITY.

Pursuant to Mont. Admin. R. § 18.6.311(1), the CITY will own the railroad signal. If the grade crossing is abandoned, or if for any reason the signals are no longer required at this location, the RAILROAD and CITY will determine if the signals are to be installed at another location or used for replacement parts.

If a railway or a highway improvement project necessitates a rearrangement, relocation, or alteration of the signals at this crossing, the party whose improvement causes such change will pay the cost thereof.

X

All notices, billings, payments, and other required communications ("Notices") to the Parties shall be in writing, and shall be addressed respectively as follows:

If to **CITY**: CITY OF LAUREL
 Attention: Director of Public Works
 115 West 1st Street
 Laurel, MT 509044
 Telephone: (406) 628-7431

If to **RAILROAD**: MONTANA RAIL LINK INC.
 Office of the Chief Engineer
 P.O. Box 16390
 Missoula, MT 59808-6390
 Telephone: (406) 523-1440
 FAX (406) 523-1529

Telephone: (406) 628-7431

If to **RAILROAD:**

MONTANA RAIL LINK INC.
Office of the Chief Engineer
P.O. Box 16390
Missoula, MT 59808-6390
Telephone: (406) 523-1440
FAX (406) 523-1529

All notices shall be given (i) by personal delivery to the Parties, or (ii) by electronic communication, with a confirmation sent by mail, or (iii) by mail. All notices shall be effective and shall be deemed delivered (i) if by personal delivery on the date of delivery if delivered during normal business hours, and, if not delivered during normal business hours, on the next business day following delivery, (ii) if by electronic communication on the next business day following receipt of the electronic communication, or (iii) if solely by mail on the next business day after actual receipt. Any Party may change its address by notice to the other Parties.

XI

This agreement will be binding on the parties hereto, their successors and assigns.

MONTANA RAIL LINK, INC.

By: _____

Heather Mattson
VP Finance and Accounting

CITY OF LAUREL

By: David Waggoner

Name: DAVID WAGGONER

Title: MAYOR

Attest: Michelle LB



NOTE:
SEE INTERSECTION DETAIL SHEETS FOR SPECIFICS OF INTERSECTION GRADING.

REV.	DATE	BY	CHK	DESCRIPTION

PROJECT NO.
2104-00862
DATE
04/13/2022

SOUTH 4TH STREET RECONSTRUCTION
CITY OF LAUREL
LAUREL, MT

S: 4TH ST. STREETS PLAN & PROFILE STA 26+50 TO 28+50

SHEET
C-14

© KLJ 2022

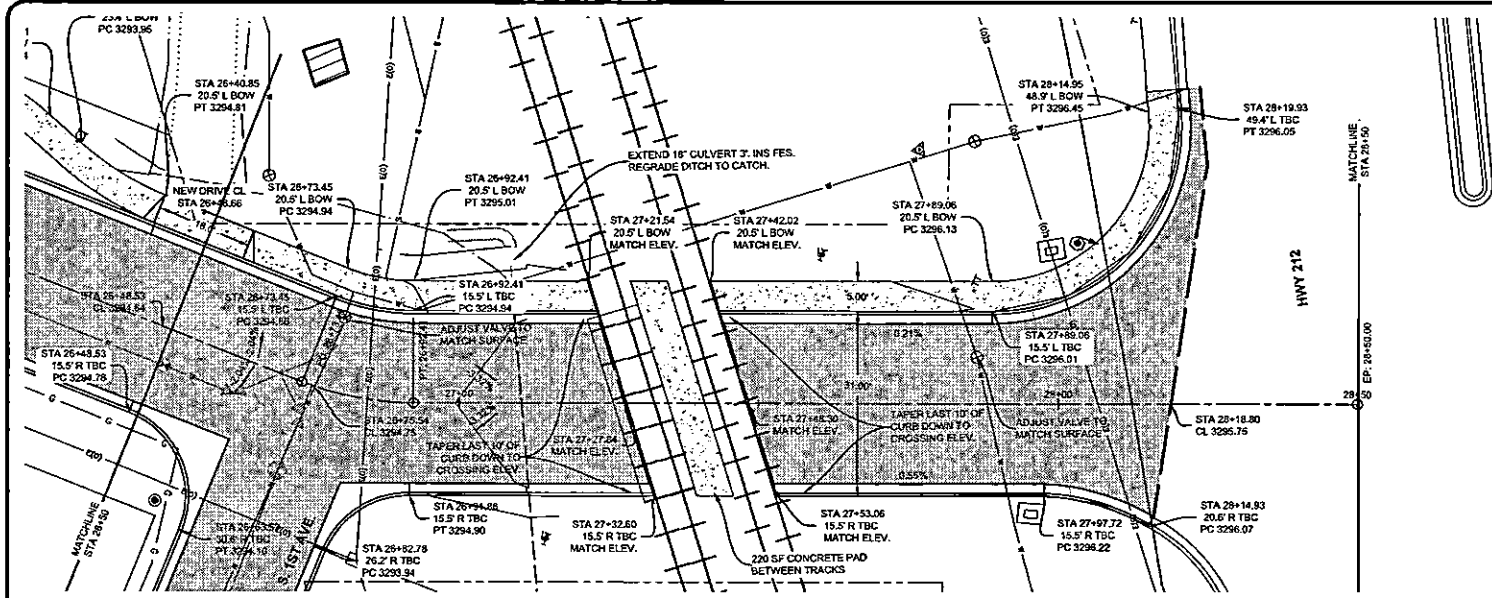


Exhibit "A"

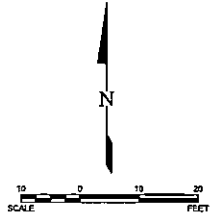
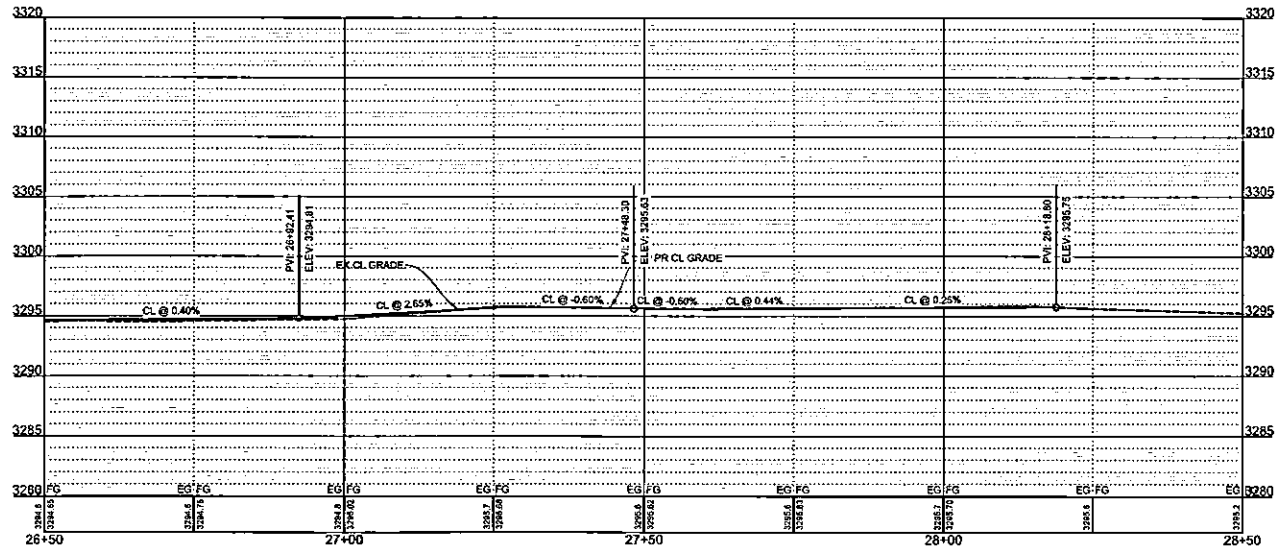


EXHIBIT "B"

MONTANA RAIL LINK, INC.

Purchase and Deliver Concrete Crossing Surface for Use at (DOT# 104001W) South 4th Street
in Laurel, Montana

Railroad Milepost 0.50, 1st (Casper Branch) Subdivision

05/31/22

DETAILED ESTIMATE OF COST

ITEM	QTY	UNITS	UNIT COST (\$)	TOTAL
CONCRETE CROSSING SURFACE	65	*TF	\$ 211.00	\$ 13,715.00
STEEL END DEFLECTORS	2	SETS	\$ 450.00	\$ 900.00
FREIGHT (DELIVERY OF CROSSING)	2	LOAD	\$ 2,975.00	\$ 5,950.00
ACCOUNTING FEE	1	EA	\$ 243.00	\$ 243.00
ESTIMATED COST TO CITY OF LAUREL				\$ 20,808.00

*TF = Track Feet

EXHIBIT "C"

Requirements for Contractors, Public Employees, and Private Individuals (Hereinafter Referred to as Contractor) When Working on the Railroad's Right of Way

(Note - these requirements **do not** apply to railroad workers and/or contractors or firms working for the Railroad. Any railroad worker, contractor, or firm doing work for the Railroad shall comply with the terms and conditions of their contract)

1.01 General

1.01.01 The Contractor shall plan, schedule, and conduct all work activities so as not to interfere with the movement of any trains on Railroad Property.

1.01.02 The Contractor's right to enter Railroad's Property is subject to the absolute right of Railroad to cause the Contractor's work on Railroad's Property to cease if, in the opinion of Railroad, Contractor's activities create a hazard to Railroad's Property, employees, and/or operations. Railroad has the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railroad; (ii) Contractor (or any of its subcontractors), in Railroad's opinion, prosecutes the Project work in a manner which is hazardous to Railroad property, facilities or the safe and expeditious movement of railroad traffic; (iii) any of the insurances required by Railroad are canceled during the course of the Project. The work stoppage continues until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railroad's Chief Engineer or his designee, or until additional insurance has been delivered to and accepted by Railroad. Any such work stoppage under this provision does not give rise to any liability on the part of Railroad. Railroad's right to stop the work is in addition to any other rights Railroad may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railroad desires to stop construction work on the Project, Railroad agrees to notify the following individual as soon as possible in writing:

Kurt Markegard, P.E.

City of Laurel

115 West 1st St

Laurel, MT 59044

Phone: (406) 628-4796

Email: kmarkegard@laurel.mt.gov

It is understood that written notification by Railroad may be secondary to safeguarding Railway's employees, Property, and equipment in the event of a hazardous or unsafe situation.

1.01.03 The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to, environmental, health and safety. The Contractor shall be responsible for and indemnify and save the Railroad harmless from all fines or penalties imposed or assessed by Federal,

State and Local Governmental Agencies against the Railroad which arise out of Contractor's work.

1.01.04 For any demolition, false work above any tracks, or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 1/2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, furnish the Railroad a pdf electronic file (with included working drawings to be legibly printable on 11"x17" paper) showing details of construction affecting Railroad Property and tracks. Ensure the working drawings include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and ensure each of the sets of plans includes complete structural calculations of any demolition, falsework, shoring, or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" (<http://www.bnsf.com/in-the-community/pdf/bnsf-up-shoring-guide.pdf>) must be used for determining design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". For all demolition and false work plans, the current "BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan Over the BNSF Railroad" (<http://www.bnsf.com/in-the-community/pdf/bnsf-demolition-guideline.pdf>) Sections I, II, III, IV and Appendixes must be followed. Ensure all submittal drawings and calculations are sealed by a currently registered Professional Engineer licensed in the State of Montana. Ensure all calculations take into consideration railroad surcharge loading and are designed to meet American Railroad Engineering and Maintenance-of-Way Association (previously known as American Railroad Engineering Association)(AREMA) Coopers E-80 live loading standard. The Railroad will notify the City and Contractor of Railroad's comments, and Railroad will advise the City and Contractor at the time when the Railroad has no objections to submittals. Contractor may not begin work covered under submittals provided in accordance with this section until Railroad has provided, in writing, a statement of no objections. The Contractor will be required to use lifting devices, such as cranes and/or winches, to place or to remove any false work over Railroad's tracks. The Contractor is in no way to be relieved of responsibility for results obtained by the implementation of said plans. **Railroad has 30 calendar days to review each submittal and provide comments.**

1.01.05 Subject to the movement of the Railroad's trains, the Railroad will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor shall have no claim whatsoever for any type of damages in the event his work is delayed by the Railroad.

1.01.06 The Contractor shall take protective measures as are necessary to keep the Railroad's facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to Railroad facilities resulting from Contractor's operations will be repaired or replaced by the Railroad and the cost of such repairs or replacement shall be paid for by the Contractor. Notify Railroad's Public Works Engineer as listed in this Section at least two weeks prior to the anticipated

substantial completion of the Project to arrange for a site inspection at a mutually agreeable date and time for Railroad and Contractor.

Notify the Railroad's Director of Engineering in writing, by email at: jbieber@mtrail.com or by letter to: Director of Engineering Jim Bieber, Montana Rail Link, PO Box 16390, Missoula, MT 59808 and provide blasting plans to the Railroad for review and approval at least seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railroad's Property.

1.01.07 The Contractor shall abide by the following clearances during construction, maintenance or improvements.

Abide by the following temporary clearances during construction:

15'-0" Horizontally from center line of nearest track.

22'-6" Vertically above top of rail (temporary falsework clearance may be reduced to 21'-6" Subject to specific Railroad approval)

27'-0" Vertically above top of rail for electric wires carrying less than 750 volts

28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts

30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

Upon completion of the project, ensure the following clearances have been maintained:

25' Horizontally from centerline of nearest track

23'-4" Vertically above top of rail

1.01.08 The Contractor shall not move any equipment or materials across the Railroad's track unless at a public road crossing or at an approved temporary crossing and permission has been obtained from the Railroad.

1.01.09 Discharge, release or spill on Railroad Property of any hazardous substances in excess of a reportable quantity or any hazardous waste is prohibited, and Contractor shall immediately notify the Railroad's Chief Dispatcher at 1(800) 338-4750, of any discharge, release or spills. Contractor shall not allow Railroad Property to become a treatment or storage facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

1.01.10 The Contractor, upon completion of the work covered by this contract, shall promptly remove from the Railroad's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and shall cause the Railroad's Property to be left in a condition acceptable to the Railroad's representative.

1.02 Protection of Railroad Facilities and Railroad Flagger Services:

1.02.01 To initially commence flagging and/or to resume flagging after an extended period of non-use of flagging, give a minimum of thirty (30) calendar days notice to Railroad's Director of Engineering Jim Bieber, at jbieber@mtrail.com in advance of when flagging services are required in order to bulletin the Flagger position per Railroad's labor agreement requirements. If flagging services are scheduled in advance by the Contractor, and it is subsequently determined by the parties hereto that Flagger services are no longer necessary, provide a minimum of five (5) business days notice in writing to the Public Works Engineer and Roadmaster per Section 1.01.06 to abolish the position per Railroad's labor agreements.

1.02.02 Once the Project has commenced, submit schedules of required flagging needs to Railway's local Roadmaster, local Assistant Roadmaster, and Director of Engineering and any persons designated by the CITY on a weekly basis. Submit schedules for the subsequent week's flagging needs. Submit schedules electronically by email to the addresses provided by the Railroad **not later than 1400 hours (2 pm) every Thursday**. The weekly schedule is needed for Railroad's work force utilization. Failure to submit a weekly flagging schedule may result in a Flagger not being assigned to the Project when needed by Contractor. Ensure the required flagging needs emails contains the following information each week: Dates of Schedule, Days of Week, Flagger Needed (Yes/No), Contractor Work Hours, Brief Work Description. An example of one day of such a schedule is as follows:

Date	Day	Flagger Yes/No	Contractor Hours	Work Description
Jan 14	Mon	Flagger Yes	0700-1730	Setting forms

1.02.03 Railroad Flagger and protective services and devices are required and furnished when Contractor's work activities are located over or under and within twenty-five (25) feet measured horizontally from center line of the nearest track or railroad structures and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

1.02.03a When in the opinion of the Railroad's Flagger, Roadmaster, or Public Works Engineer, it is necessary to safeguard Railroad's Property; employees; trains; engines; and facilities, or when other conditions warrant.

1.02.03b When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railroad's Flagger, Roadmaster, or Public Works Engineer, track or other Railroad facilities may be subject to movement or settlement.

1.02.03c When work in any way interferes with the safe operation of trains at timetable speeds.

1.02.03d When any hazard is presented to Railroad track, communications, signal, electrical, or other facilities either due to persons, material, equipment, or blasting in the vicinity.

1.02.03e Special permission must be obtained from the Railroad before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

1.02.04 Flagging services are performed by a qualified Railroad Flagger. The sole and exclusive function of the Flagger is to protect Railroad's operations from interference by, and adverse effects from, the Contractor's activities on Railroad Right of Way. Performance of this function includes, but is not limited to: (1) setting any required protective devices and making all necessary communications with Railroad's operating groups prior to Contractor's work start time, (2) a required Job Briefing with the Contractor's on-site crew boss each day prior to work commencement, (3) providing the Contractor with advance notice of approach of railroad owned and/or operated trains or other "on-track" equipment, and (4) removing required protective devices and making necessary communications with Railroad's operating groups after Contractor work has ceased. Upon notice of approach, Contractor employees must immediately cease work within 25 feet of tracks and/or place cranes which are in positions to foul tracks in the event of a tip over into safe configurations and move to the places designated in the morning Job Briefing. Railroad flagging personnel do not have the authority to modify or change the contract plan or specifications. **Obey any Flagger safety instructions immediately and without question. Failure to comply may result in Project shut down until the situation can be resolved to Railroad's sole satisfaction and/or additional consequences for the Contractor.** Direct questions or requests for modifications, changes, or interpretations of the contract plans and/or specifications, which require railroad approval, to the railroad's Public Works Engineer as listed in Section 1.01.06.

1.02.05 The cost of Flagger services provided by the Railroad will be borne by the CITY. The current base cost per hour for one (1) Flagger is \$50.50 which includes vacation allowance, paid holidays, Railroad and Unemployment: Insurance, Public Liability and Property Damage Insurance, health and welfare benefits, transportation, meals, lodging and supervision for an eight (8)-hour basic day with time and one-half or double time for non-standard start work times, overtime, rest days and holidays. Per diem at the current rates may be charged if paid to Flagger by Railroad's labor agreements. In addition, there will be an estimated current \$30.00 per hour charge for vehicle rental, or mileage, from headquarters to set protective devices, while at Project site, remove protective devices, then return to headquarters. This rate is for the classification of Laborer 5+ Years and is shown solely for the Contractor's information, and there is no guarantee that this class of labor will actually be used or that the rates of pay shown in column will be those in effect at the time the work is undertaken. These rates are subject to any increases which may result from Railroad Employees-Railroad Management negotiations or which may be authorized by Federal authorities. The flagging rates in effect at the time of performance by the Contractor hereinunder are used to calculate the actual costs of flagging pursuant to this Section 1.02.

1.02.05a A Flagger generally consists of one (1) employee. However, additional personnel may need to be assigned as a Flagging Crew at Railroad's sole discretion. Additional personnel including, but not limited to, Communications Technicians and/or Signalmen, used to protect communications and signal facilities, may be required to protect Railroad Property and operations, if deemed necessary by a Railroad Supervisor.

1.02.05b Each time a Flagger is called, the minimum period for billing is the eight (8)-hour basic day, provided the Contractor has been working 8-hour days during the week. However, two exceptions may raise the minimum billing period: (1) if overtime, as provided for in Railroad's labor agreement, was performed on a day, the minimum billing period includes the overtime plus the minimum 8-hour day, and (2) if the typical work schedule for the Contractor has been 10-hour days, the minimum billing period is the 10-hour day, plus any overtime performed that day.

1.03 Contractor Safety Requirements

1.03.01 Work in the proximity of railroad track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. Ensure all work performed by Contractors within 25 feet of the centerline of any track(s) is in compliance with Federal Railroad Administration Roadway Worker Protection regulations.

1.03.02 Any Contractor employee, its subcontractor's employee, agents or invites under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railroad's Property and subsequently released to the custody of a representative of the Contractor. Future access to the Railroad's Property by that employee will be denied.

1.03.03 All persons are prohibited from having pocketknives with blades in excess of three (3) inches, firearms or other deadly weapons in their possession while working on Railroad Property.

1.03.04 All personnel protective equipment used on Railroad Property shall meet applicable OSHA and ANSI specifications. Contractor personnel protective equipment requirements are; a) safety glasses with side shields, b) hard hats, c) safety shoes: hardened toe, above-the-ankle lace-up with a defined heel and d) high visibility retro-reflective orange vests. Hearing protection, fall protection and respirators will be worn as required by State and Federal regulations.

1.03.05 The Contractor shall not pile or store any materials, machinery or equipment closer than 25'-0" to the centerline of the nearest Railroad track. At highway/rail at-grade crossings, materials, machinery or equipment shall not be stored or left temporarily which interferes with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor may establish a staging and/or storage area with concurrence of the Railroad's representative.

1.03.06 Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and, if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railroad Property must be left inoperable and secured against movement.

1.03.07 Contractor must not create and leave any temporary or permanent conditions at the work site that would interfere with water drainage. Any work performed over water shall meet all Federal, State and Local regulations.

1.03.08 Contractor must immediately report any damage to Railroad's Property, or any hazard that is noticed on passing trains, to the Railroad Flagger if present at the project site or to Railroad's Emergency Hotline at 1-800-498-4838. Report any vehicle or machine which has or may have come in contact with a track, signal equipment, or structure and could result in a train derailment by the quickest means possible to the Railroad Flagger if present at the job site or to the Railroad's Emergency Hotline at 1-800-498-4838.

1.04 Excavation

1.04.01 Before excavating, it must be ascertained by the Contractor if there are any underground pipe lines, electric wires, or cables, including fiber optic cable systems, that either cross or run parallel with the track which are located within the project's work area. Excavating on Railroad Property could result in damage to buried cables resulting in delay to Railroad traffic, including disruption of service to users resulting in business interruptions involving loss of revenue and profits. **A minimum of three (3) business days before any excavation commences, the Contractor must contact the Railroad's**

Signal Supervisor Nathan Kluck at (406) 570-5993 and Roadmaster Russ Young at (406) 698-8882 and advise them of the upcoming excavation and allow them to arrange for any signal and communications lines to be located by Railroad's personnel. If neither the Signal Supervisor nor the Roadmaster are reached, contact Railroad's main office at (406) 523-1440 and advise the Director of Engineering of the situation. Railroad is not a party to One-Call Locates. All underground and overhead wires must be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is also the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

1.04.02 The Contractor must cease all work and the Railroad must be notified immediately before continuing excavation in the area if unexpected obstructions are encountered. If the obstruction is a utility, and the owner of the utility can be identified, then the owner should also be notified immediately. If there is any doubt about the location of underground cables or lines of any kind, no work will be performed until the exact location has been determined. There will be no exceptions to these instructions.

1.04.03 All excavations shall be conducted in compliance with applicable OSHA regulations, and regardless of depth, shall be shored where there is any danger to tracks, structures or personnel.

1.04.04 Any excavations, holes or trenches on Railroad Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, all areas must be secured and left in a condition that will ensure that Railroad employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.05 Hazardous Waste, Substances and Material Reporting

1.05.01 If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to the railroad's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor shall immediately: (a) notify the Railroad's Chief Dispatcher at 1-800-338-4750, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.06 Insurance Requirements

1.06.01 For projects involving construction or demolition on the Railroad's Property or Right of Way, the Contractor will provide proof of insurance which conforms to the current requirements of the Railroad. The current insurance requirements of the Railroad can be obtained from the Public Works Engineer at (406) 523-1440. Unless

specifically notified that Railroad Protective Insurance is not required, the Contractor should assume Railroad Protective Insurance is a requirement of any work on Railroad Property or Right of Way.

1.07 Personal Injury Reporting

1.07.01 The Railroad is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invites while on the Railroad's Property must be reported immediately (by phone mail if unable to contact in person) to the Railroad's representative in charge of the project. **The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railroad at 1(406) 523-1529** and a copy to the Railroad's Flagger, if present, no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
[i.e. (a) Laceration (b) Hand]
11. Description of Accident (to include location, action, result, etc.): _____
12. Treatment:
G First Aid Only
G Required Medical Treatment
G Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILROAD AT (406) 523-1529
AND COPY TO
RAILROAD FLAGGER (IF PRESENT)**