

RESOLUTION NO. R23-45

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO RIGHT OF ENTRY AND USE AGREEMENT 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 First Amendment to Right of Entry and Use Agreement by and between the City of Laurel and Montana Rail Link, Inc., a copy attached hereto and incorporated herein, is hereby approved.

Section 2: Execution. The Mayor is hereby given authority to execute the First Amendment to Right of Entry and Use Agreement by and between the City of Laurel and Montana Rail Link, Inc., on behalf of the City.

Introduced at a regular meeting of the City Council on the 25th day of July, 2023, by Council Member Mize.

PASSED and APPROVED by the City Council of the City of Laurel the 25th day of July, 2023.

APPROVED by the Mayor the 25th day of July, 2023.

CITY OF LAUREL




Dave Waggoner, Mayor

ATTEST:



Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:



Michele L. Braukmann, Civil City Attorney

RIGHT OF ENTRY AND USE AGREEMENT

^{DS}
^{MM} This Right of Entry for Access to Property and Use Agreement (“Agreement”) is entered into this 3rd day of ~~June~~^{July}, 2023 by and between Montana Rail Link, Inc. (“MRL”) and the City of Laurel (collectively, “CITY”).

WHEREAS, CITY is the owner of certain real property, commonly referred to as Riverside Park, located in Laurel, Montana and more particularly described in Exhibit A attached hereto (the “Property”);

WHEREAS, MRL desires access to and use of a portion of the Property, including the use of CITY’s boat ramp, as part of MRL’s response and restoration efforts related to a recent derailment which occurred on MRL-controlled track in Reed Point, Montana; and

WHEREAS, CITY desires to grant MRL access and use of the Property in accordance with the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, MRL and CITY agree as follows:

I. Term & Renewal

CITY agrees, commencing June 30, 2023 (“Effective Date”), to grant MRL and its contractor(s) access to the Property for use in staging equipment or materials and to use CITY’s boat ramp (“Boat Ramp”) to launch a jet boat or other river equipment, as part of MRL’s response and restoration efforts related to a recent derailment (“Derailment”) which occurred on MRL-controlled track in Reed Point, Montana. The term of this Agreement shall be from the Effective Date until at least August 31, 2023, unless MRL notifies CITY in writing that it no longer requires use of the Property prior to such date. This Agreement may be extended or renewed provided that both MRL and CITY agree to such an extension or renewal in writing.

II. Fee

MRL shall tender payment to CITY in the amount of Five Hundred Dollars (\$500.00) per day that MRL occupies the Property. MRL shall tender payment to CITY, in an amount corresponding to the current accumulated per-day fee, on a monthly basis, until the expiration of the term of this Agreement.

III. Use of the Property

MRL and its contractor(s) shall be entitled to use the Property and Boat Ramp, subject to all applicable laws, rules and regulations, for any purpose related to MRL’s response and restoration efforts related to the Derailment, including staging equipment or launching boat(s) or other response-related equipment into the Yellowstone River, as part of such efforts. MRL shall have access to the Property on a 24-hour per day, seven-day per week basis. CITY reserves the right to ensure that MRL is using the Property in accordance with the terms of this Agreement. CITY agrees that during the term of this Agreement it shall not interfere with nor obstruct the operations of MRL or its contractors on the Property. MRL agrees upon the expiration of the term of this Agreement, all MRL personal property, and its contractors’

personal property, will be removed from the Property.

CITY agrees to supply electrical service and garbage disposal services, for MRL's use for the duration of its occupation of the Property.

IV. Indemnification

MRL hereby agrees that it shall be responsible for its and its contractors' activity on the Property during the term of this Agreement. Furthermore, MRL shall indemnify, defend and hold CITY, its successors, assigns, shareholders and insurers harmless from any and all claims, losses, demands, costs (including attorneys' fees) and judgments (collectively, "Claims") which arise out of or relate to MRL's use or occupation of the Property. Claims shall include any alleged violations of environmental laws, rules or regulations and MRL shall comply with any cleanup or remedial order issued by any governmental agency as it relates to Claims arising out of MRL's use or occupation of the Property.

V. Insurance

MRL shall provide a letter of self insurance or proof of the following insurance to CITY:

<u>Type of Insurance</u>	<u>Limits of Liability</u>
Railroad Liability – Personal Injury/Property Damage	\$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate
Automobile Liability —Bodily Injury And Property Damage	\$1,000,000 combined single limit per occurrence -Hired car, owned and non-owned autos

A signed letter of self insurance or Certificate or Certificates of Insurance shall be furnished to CITY evidencing the above insurance.

In addition, MRL shall ensure that all of its subcontractors and agents who enter upon the property are properly insured for their respective activities.

VI. Restoration of Property

MRL, upon termination of its right to access and use the Property, through this Agreement, shall restore the Property to a substantially-similar condition as it was found on the Effective Date.

VII. Miscellaneous

A. Entire Agreement

CITY and MRL acknowledge that this Agreement contains the entire agreement between them regarding access to and use of the Property.

B. Governing Law

This Agreement shall be governed and construed according to the laws of the state of Montana.

C. Confidentiality

CITY acknowledges and agrees that any and all information developed, disclosed or otherwise discovered by CITY during the negotiation of any agreements and execution of any tasks on CITY's property by MRL shall remain confidential. CITY shall not disclose or otherwise disseminate any information, including any drawings, schematics, plans, designs, or any terms of compensation or reimbursement, developed during the negotiation of any agreements and/or execution of any tasks related to MRL's activity on CITY's property, unless such disclosure or dissemination is authorized in writing by MRL or compelled by a court of competent jurisdiction.

D. Counterparts

This Agreement may be executed in counterparts and transmitted via electronic mail or facsimile. Such counterparts, when taken together, shall constitute one and the same original instrument.

IN WITNESS WHEREOF, MRL and CITY have executed this Agreement as of the day and year first written above.

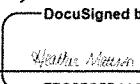
[Signatures to follow]

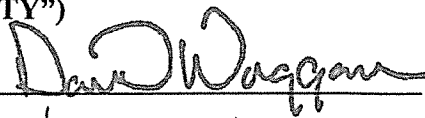
MONTANA RAIL LINK, INC.

CITY OF LAUREL

("MRL")

("CITY")

DocuSigned by:
By: 
F7C55C5B1A9C498...
Its: Vice President Finance & Accounting

By: 
Name: David Waggoner
Title: Mayor

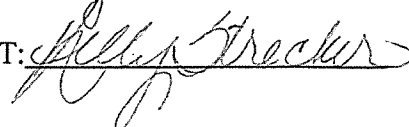
ATTEST: 

EXHIBIT A

MRLC23-115

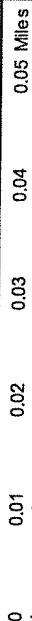
Portion of Riverside Park in Laurel, Montana utilized by MRL is depicted by red outline.

Riverside Park Staging

The Response Group
Emergency Response, Pre-Planning & Support

Scale

1:1,128



FIRST AMENDMENT TO RIGHT OF ENTRY AND USE AGREEMENT

This First Amendment to Right of Entry and Use Agreement ("Amendment") is entered into this 12th day of July, 2023, by and between Montana Rail Link, Inc. ("MRL") and the City of Laurel ("CITY").

WHEREAS, MRL and CITY entered into contract number MRLC23-115 on or around July 3, 2023 (the "Agreement"); and

WHEREAS, MRL and CITY desire to amend the Agreement according to the terms and conditions contained in this Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained herein, MRL and CITY agree as follows:

1. MRL and CITY acknowledge and agree that on or around July 11, 2023, MRL requested CITY permission to access and use an additional portion of CITY property within Riverside Park, more particularly described in Exhibit B attached hereto (the "Additional Property"), as part of MRL's response and restoration efforts related to a Derailment (defined in the Agreement).
2. CITY agrees, commencing July 12, 2023, to grant MRL and its contractor(s) access to the Additional Property, subject to all terms and conditions of the Agreement. CITY further agrees to allow MRL to stage lined roll-off waste bins within the Additional Property area.
3. Effective July 12, 2023, the Additional Property shall be considered part of the Property defined in the Agreement.
4. Section II of the Agreement shall be deleted in its entirety and replaced with the following language. MRL and CITY acknowledge and agree that the replacement language herein reflects an increase in the per-day fee due to the CITY for MRL's occupation of the Property.

II. Fee

MRL shall tender payment to CITY in the amount of Five Hundred Dollars (\$500.00) per day for each day that MRL and/or its consultants, contractors, or invitees occupy the Property, for MRL's use of the Property from June 30, 2023 through July 11, 2023.

Effective July 12, 2023, MRL shall tender payment to CITY in the amount of One Thousand Three Hundred Dollars (\$1,300.00) per day for each day that MRL and/or its consultants, contractors, or invitees occupy the Property.

MRL shall tender payment to CITY, in an amount corresponding to the current accumulated per-day fee, on a monthly basis, until the expiration of the term of this Agreement.

- 5. All other terms and conditions contained in the Agreement not modified by this Amendment shall remain unchanged and in full force and effect.

[Signatures to follow]

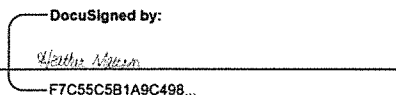
IN WITNESS WHEREOF, MRL and CITY have caused this Amendment to be executed as of the day and year first written above.

MONTANA RAIL LINK, INC.

CITY OF LAUREL

(“MRL”)

(“CITY”)

By: 

By: 

Its: Vice President of Finance & Accounting

Its: 

Exhibit B
FIRST AMENDMENT TO RIGHT OF ENTRY AND USE AGREEMENT
Contract Number MRLC23-115

