

LICENSE FOR BICYCLE PATH/PEDESTRIAN WALKWAY NO. 601820
03Missoula

THIS LICENSE ("License"), made as of the 15th day of March, 2015 ("Effective Date") by and between **MONTANA RAIL LINK, INC.**, a Montana corporation ("Licensor"), whose mailing address is PO Box 16624, Missoula, MT 59808-6624 and physical address is 101 International Way, Missoula, MT 59808, and

whose address is City of Missoula ("Licensee")
 435 Ryman Street
 Missoula, MT 59801

RECITALS

A. Licensor is in the railroad transportation business and leases a system of rail tracks ("Licensor's Track(s)") and various real properties associated therewith from BNSF Railway Company, a Delaware corporation ("BNSF"), pursuant to that certain Master Agreement between Licensor and BNSF dated July 21, 1987 ("Master Lease"), including the Premises described below which Licensee desires to license from Licensor.

B. Licensor has agreed to license to Licensee the Premises, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), a bicycle path/pedestrian walkway (the "Path") across or along the right of way leased by Licensor's at or near the Station of Missoula, County of Missoula, State of Montana, Mile Post 116+0245, Survey Station 6127+41, as shown on the attached plat, dated 05/12/14, attached hereto as Exhibit "A" and made a part hereof ("Premises"), for the purposes specified in Paragraph 3 below.
2. Licensee shall not disturb any improvements of Licensor or BNSF, nor Licensor's or BNSF's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use Premises exclusively as a site for construction and maintenance of a Path as shown on the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Licensor or BNSF of the affected rail corridor, Licensor and BNSF shall not be liable to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Path or entering the Premises on behalf of Licensee shall be deemed agents of Licensee for purposes of this License.
6. This License is subject and subordinate to the Master Lease. BNSF hereby agrees by its signature below to recognize Licensee's rights under this License, if, prior to the termination of this License, or to the expiration of the term of this License, the term of the Master Lease expires, the Master Lease is terminated or BNSF reenters and repossesses the Premises after a default by Licensor under the Master Lease. If BNSF succeeds to the rights of Licensor as the "Licensor" under this License, Licensee agrees that (i) BNSF shall not be liable or responsible for any breach of or default under this License arising prior to the date that BNSF succeeds to the rights of Licensee as the "Licensor" under this License; (ii) BNSF shall not be required to cure or correct any breach or default under

this License arising prior to the date that BNSF succeeds to the rights of Licensor as the "Licensor" under this License; and (iii) no breach of or default under this License arising prior to the date that BNSF succeeds to the rights of Licensor as the "Licensor" under this License shall excuse, delay, release or relieve Licensee from the payment and performance of all of Licensee's duties and obligations under this License. The preceding sentence is not intended and shall not be construed to affect any rights or remedies of Licensee against Licensor arising or resulting from a breach of or default under this License by Licensor prior to the date that BNSF succeeds to the rights of Licensor as the "Licensor" under this License. If BNSF succeeds to the rights of Licensor as the "Licensor" under this License, Licensee agrees to recognize BNSF as the "Licensor" under this License and timely tender payment and performance of Licensee's duties and obligations under this License to BNSF as if BNSF were named as "Licensor" in this License.

TERM

7. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

COMPENSATION

8. (a) Licensee shall pay Licensor, annually in advance for this License the sum of **FIVE HUNDRED DOLLARS (\$500.00) PER YEAR** as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Premises, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Licensor, when deemed necessary by the Licensor's representative, will be borne by the Licensee. The flagging rate in effect at the time of performance by Licensee hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) Licensee acknowledges that Licensor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Licensor, which precludes Licensor's ability to exercise rejection of a rental payment before Licensee's check is cashed. Licensee agrees that as a condition of Licensor granting this License Licensee hereby waives any rights it may have under law to force continuation of this License due to Licensor having accepted and cashed Licensee's rental remittance. Licensor shall have the option of rejecting Licensee's payment by refunding to Licensee the rental amount paid by Licensee, adjusted as set forth in this License, and enforcing the termination provisions of this License.
- (d) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

9. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the use of the Premises or the presence, construction or maintenance of the Path.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations.

DEFINITION OF COST AND EXPENSE

10. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

11. Licensor and BNSF excepts and reserves the right, to be exercised by Licensor and BNSF and any other parties who may obtain written permission or authority from Licensor or BNSF:
- (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor or BNSF in its sole discretion deems appropriate, provided Licensor and BNSF uses all reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Paragraph 3 above.

LICENSEE'S OPERATIONS

12. (a) Licensee shall notify Licensor's Roadmaster, at the telephone number shown on Exhibit "A" at least five (5) business days prior to entry onto Premises for construction of the Path.
- (b) In performing the work described in Paragraph 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
13. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor and BNSF, or the safe operation and activities of Licensor and BNSF. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor and BNSF has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense, construct and maintain the Path in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor or BNSF, or the safe operation and activities of the railroad. Further, the Path shall be constructed, installed and maintained in conformity with the plans and specifications shown on the print attached hereto as Exhibit A and made a part hereof (which, if present, are to be deemed part of the Drawings and Specifications). Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the Path at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the Path by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor and BNSF have no duty or obligation to observe or inspect, or to halt work on, the Path, it being solely Licensee's responsibility to ensure that the Path is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities after giving Licensee written notice seven (7) days in advance of commencing such work, provided however, that written notice shall not be required in the event of emergency. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. During the construction and any subsequent maintenance performed on the Path, Licensee shall perform such work in a manner to preclude damage to the property of Licensor and BNSF, and preclude interference with the operation of its railroad. The construction of the Path shall be completed within Eighteen (18) months of the Effective Date. Upon completion of the construction of the Path and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to their former state as of the Effective Date of this License.
15. If at any time during the term of this License, Licensor or BNSF shall desire the use of its rail corridor in such a manner as would, in Licensor's or BNSF's reasonable opinion, be interfered with by the Path, Licensee shall, at its sole expense, within One hundred twenty (120) days after receiving written notice from Licensor or BNSF to such effect, make such changes in the Path as in the sole discretion of Licensor or BNSF may be necessary to avoid interference with the proposed use of the rail corridor, including, without limitation, the relocation of the existing or the construction of a new Path.
16.
 - (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Path, Licensor will provide Licensee any information that Licensor has in the possession of its Engineering Department concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Path. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
 - (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor and BNSF prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's and BNSF's reasonable opinion that granular material is present, Licensor and BNSF may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's and BNSF's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor and BNSF have approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
17. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable legal requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable legal requirements.
18. While this License is personal to Licensee and its invitees, it is recognized that the Path may be used by unauthorized persons, and Licensee agrees that for the purposes of this License all persons using the Path shall be deemed the agents or invitees of Licensee.
19. Upon termination of this License, Licensee shall, at its sole cost and expense:
 - (a) remove the Path and all appurtenances thereto at the Licensor's and BNSF's sole discretion;
 - (b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;

- (c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (d) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

INDEMNITY

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR, BNSF, BURLINGTON NORTHERN SANTA FE LLC AND EACH OF THE AFORMENTIONED PARTIES' AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- (i) **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (ii) **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- (iii) **LICENSEE'S AND ITS AGENTS' OCCUPATION AND USE OF THE PREMISES,**
- (iv) **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**

ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

(b) **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN PARAGRAPH 21 (a), LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR(S) TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT LICENSOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PATH FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR OR BNSF TO CLAIMS THAT LICENSOR OR BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR OR BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

(c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR(S) TO AGREE REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT**

("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

- (d) Upon written notice from any Indemnitee, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

22. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

INSURANCE

23. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

- (a) Commercial General Liability Insurance. This insurance shall 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 \$4,000,000. Coverage must be purchased on a post 2004 ISO occurrence 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 shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to **Licensors and BNSF**.
- Additional insured endorsement in favor of and acceptable to **Licensors and BNSF**
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by **Licensors and BNSF**.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Licensors' or BNSF's** employees.

No other endorsements limiting coverage may be included on the policy with regard to the liability assumed by the Licensee under this License.

- (b) Business Automobile Insurance. This insurance shall 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
 - Bodily injury and property damage
 - Any and all vehicles owned, used or hired
 - Waiver of subrogation in favor of and acceptable to **Licensors and BNSF**.

- Additional insured endorsement in favor of and acceptable to **Licensor and BNSF**.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by **Licensor and BNSF**.

(c) Workers' Compensation and Employer's Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee'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.

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

- Waiver of subrogation in favor of and acceptable to **Licensor and BNSF**.

(d) Railroad Protective Liability Insurance. This insurance shall name only the Licensor and BNSF as the Insureds with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Path. **THE CONSTRUCTION OF THE PATH SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** OR, IF THE CONSTRUCTION OF THE PATH IS REASONABLY EXPECTED TO EXCEED ONE (1) YEAR, LICENSE SHALL OBTAIN AN ADDITIONAL RAILROAD PROTECTIVE LIABILITY INSURANCE POLICY. If further maintenance of the Path is needed at a later date, after initial construction of the Path is completed, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall 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 include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Licensor and BNSF prior to performing any work or services under this License.

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.

Licensee agrees to waive its right of recovery against Licensor and BNSF for all claims and suits against Licensor and BNSF. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor and BNSF for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor and BNSF for loss of its owned or leased property or property under its care, custody, or control.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor and BNSF, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Indemnitee liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor 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 Licensor or BNSF arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor 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 path is being constructed.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

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

Not more frequently than once every five years, Licensor and BNSF may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the Path construction or maintenance is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor and BNSF as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor and BNSF to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor and BNSF herein.

Failure to provide evidence of insurance as required by this Section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

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

For purposes of this Section, BNSF shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

24. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Manager of Environmental Projects at (406)523.1415 and to BNSF's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor and BNSF immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor and/or BNSF have notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Path which occurred or may occur during the term of this License, Licensor and BNSF may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor and BNSF in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such

conditions or activities; provided, however, that Licensee's reporting to Licensor and BNSF shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's and/or BNSF's request for information regarding said conditions or activities.

ALTERATIONS

25. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor and BNSF's prior written consent. Notwithstanding the foregoing, minor alterations that solely conform the Premises to the intended use of the Path, including without limitation installation of benches, trail and interpretive signage, and additional landscaping within the Premises, shall not require the Licensor's prior written consent.

NO WARRANTIES

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QUIET ENJOYMENT

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- (c) Should it become necessary for Licensor or BNSF to give Licensee written notice of Licensee's default of any covenant or agreement herein assumed, Licensee shall pay to Licensor an additional sum of One Hundred Fifty Dollars (\$150.00) to cover the cost of giving said written notice. Said sum shall be paid whether or not an attorney is retained by Licensor or BNSF. This additional sum shall be paid by Licensee at the time it corrects or cures its default, or the default shall not be considered cured,

LIENS

29. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Paragraph 29 or any other Section of this License.

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30. If Licensor or BNSF shall require the Premises for railroad purposes at any time during the term of this License, Licensor or BNSF may terminate this License upon written notice of not less than one year termination upon Licensee. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter

Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

31. If this License is terminated for any reason, Licensee, before the termination date fixed in the notice, shall remove all Licensee's personal property. The prorated rental shall be paid by Licensee until a final inspection has been made by Licensor approving the condition of the Premises. If Licensee fails to remove Licensee's personal property and any other existing removable fixtures and improvements as requested by Licensor, Licensee hereby grants Licensor and/or BNSF the right to remove such property at the sole cost and expense of Licensee. Licensor and BNSF shall also have the right to keep, convey, destroy or otherwise dispose of the property described in this Section in any way Licensor or BNSF chooses. Licensee agrees to pay any net costs incurred by Licensor and BNSF in so doing.

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32. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licensor and BNSF, which may be withheld in Licensor's and BNSF's sole discretion.

NOTICES

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor, at the address shown above.

If to Licensee, at the address shown above.

If to BNSF: BNSF Railway Company
 2500 Lou Menk Dr., AOB3
 Fort Worth, TX 76131
 Attn: Senior Manager Real Estate

SURVIVAL

34. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Path and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

35. It is understood and agreed that this License shall not be placed on public record.

APPLICABLE LAW

36. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Montana without regard to conflicts of law provisions.

SEVERABILITY

37. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

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38. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor or BNSF harmless in any prior written agreement between the parties.

MISCELLANEOUS

39. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
40. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

Signature Page Follows

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

LICENSOR

Montana Rail Link, Inc., a Montana corporation

By: _____

Printed Name: _____

Title: _____

LICENSEE

City of Missoula

By: _____

Printed Name: _____

Title: _____

Attest: _____

Date _____

Martha L. Rehbein, CMC: _____
City Clerk

BNSF's execution in the space provided below evidences BNSF's consent to this License. This License is not valid and shall have no force and effect without BNSF's signature.

BNSF

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____