

Return to:  
Real Estate Department  
Montana Rail Link, Inc.  
PO Box 16624  
Missoula, MT 59808

## PERPETUAL EXCLUSIVE EASEMENT

**THIS AGREEMENT TO CONVEY PERPETUAL EXCLUSIVE EASEMENT (“Agreement”)** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Missoula, a municipal corporation organized pursuant to the laws of the State of Montana, (hereinafter referred to as “Grantor”), and Montana Rail Link, Inc., a Montana corporation, (hereinafter referred to as Railroad).

**KNOW ALL MEN BY THESE PRESENTS THAT** Grantor owns and/or controls certain real property located in Missoula County, Montana more particularly described on Exhibit A attached hereto (“Property”).

**WHEREAS**, Railroad wishes to obtain a perpetual exclusive easement over and across the Property for the purpose of maintaining roads and railroad tracks thereon, and the Grantor is willing to grant such an easement to Railroad.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this agreement, the parties agree as follows:

**Section 1. Grant of Easement.** The Grantor does hereby grant, “as-is/where-is” and subject to the conditions and limitations herein set forth, a perpetual exclusive easement to Railroad over, across, and under, to the extent necessary, the Property (hereinafter the "Easement"). This Easement shall not be construed to grant any subsurface rights, including water and mineral, to Railroad.

**Section 2. Purpose and Use of Easement.** The Easement is for the purpose of operating and maintaining railroad tracks and private access roads to enable the Railroad to access their facilities located on property adjacent to the Easement. The Grantor acknowledges and accepts Railroad’s proposal to install and maintain a fence on a boundary of this Easement as shown on Exhibit A.

**Section 3. Duty to Maintain.** Railroad shall maintain the Easement, including the railroad tracks and private access roads, in a safe and satisfactory condition at its sole cost and expense. Railroad shall also prohibit other parties from using the Easement.

**Section 4. Description and Location of Easement.** The Easement is located on the Property as shown on the attached Exhibit A.

**Section 5. City Retained Rights.** The Grantor, unless an emergency situation arises, shall not engage in any conduct or activity that will interfere with the right of Railroad to use the Easement.

**Section 6. Easement to Run With Land.** This Easement agreement is permanent and shall run with the land and the terms and conditions hereof shall be binding on the Grantor and Railroad and their successors and assigns.

**Section 7. Future Modification of Easement.** Notwithstanding any other provision in this Agreement, the parties may mutually modify this Agreement in writing, and they shall agree in such written modification to their respective rights and obligations upon modification.

**Section 8. Indemnification.** RAILROAD AND ITS CONTRACTORS AND SUBCONTRACTORS SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND ITS SUCCESSORS, ASSIGNS, OFFICIALS, INSURERS AND AFFILIATED ENTITIES FROM (I) ANY AND ALL ACTIONS, CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS AND EXPENSES (INCLUDING ATTORNEYS' FEES) (COLLECTIVELY "CLAIMS") ARISING OUT OF ANY ACT, OR FAILURE TO ACT, ON THE PART OF RAILROAD, ITS AGENTS, EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS, ASSOCIATED WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDERS THIS AGREEMENT AND (II) ANY AND ALL CLAIMS BY THIRD PARTIES INCLUDING THE RAILROAD'S EMPLOYEES ARISING FROM OR RELATED TO THE USE OF THE EASEMENT.

**Section 9. Default and Remedies.** In the event of any breach of this Agreement by a party, the non-breaching party may give the breaching party written notice describing the breach and thirty (30) days in which to cure. Should the breaching party fail to cure such breach within the thirty (30) day cure period, the non-breaching party may enforce all the remedies available to them at law or in equity.

**Section 10. Attorneys' Fees.** In the event that suit is brought for the enforcement of this Easement or as a result of any alleged default under this Agreement, the successful party or parties to such suit shall be entitled to be paid reasonable attorneys' fees and costs by the losing party or parties, and any judgment or decree rendered shall include an award therefore.

**Section 11. Governing Law.** The land subject to the Easement being located in Missoula County in the State of Montana, the law governing the interpretation or enforcement of the terms and conditions of the Easement or this Agreement shall be the laws of the State of Montana.

**Section 12. Venue.** The land subject to the Easement being located in Missoula County in the State of Montana, the venue for any litigation pertaining to enforcement of the Easement or this Agreement shall be the Fourth Judicial District, Missoula County, State of Montana.

IN WITNESS WHEREOF, Grantor and Railroad have caused this instrument to be executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2015

**THE CITY OF MISSOULA  
("GRANTOR")**

**MONTANA RAIL LINK, INC.  
("RAILROAD")**

By: \_\_\_\_\_

By: \_\_\_\_\_

Dave Koerner

Title: \_\_\_\_\_

Title: Vice President and Chief Financial Officer

**Acknowledgement:**

**Grantor:**

State of Montana            )  
                                      )ss.  
County of Missoula        )

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ by Grantor.

Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_ (SEAL)

Residing at: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**Railroad:**

State of Montana            )  
                                      )ss.  
County of Missoula        )

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ by Railroad.

Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_ (SEAL)

Residing at: \_\_\_\_\_

My Commission expires: \_\_\_\_\_